

MISSOURI STATE PLAN FOR SPECIAL EDUCATION

Regulations Implementing Part B of the Individuals With Disabilities Education Act



Missouri Department of Elementary and Secondary Education
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Revised 2005



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MISSOURI STATE BOARD OF EDUCATION SPECIAL EDUCATION REGULATIONS

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Missouri's Vision for Special Education Services

We, the people of Missouri, believe that diversity enhances our culture; therefore, we commit our resources and efforts to accept, educate, and support all children and youth. All children and youth, being of diverse backgrounds and abilities, will have access to all learning activities with accommodations and supports to enable them to succeed. All children and youth are actively engaged in creating their own futures and are prepared for life as independent, informed, and empowered citizens; and, are embraced as vital, valued, and contributing members of their communities.

Therefore, we need inclusive communities and schools that:

- recognize that all children and youth can learn;
- commit to providing equitable opportunities for all children and youth;
- build on the individual strengths and abilities of each child and youth;
- collaborate for the benefit of all children and youth; and,
- recognize and involve families as full partners.

Mission Statement

The Department of Elementary and Secondary Education is a team of dedicated individuals working for the continuous improvement of education and services for all citizens. We believe that we can make a positive difference in the quality of life for all Missourians by providing exceptional service to students, educators, schools and citizens.

We provide leadership and promote excellence. We

- Champion high-quality public education
- Advocate equity for every learner
- Develop school leaders and other educational team members
- Establish standards that demand excellence and build a solid foundation for lifelong learning, workplace skills and citizenship
- Evaluate program and policy effectiveness
- Share best practices
- Carry out programs with the least administrative burden and cost
- Assist persons with disabilities by providing individualized support and services
- Create a caring workplace that fosters teamwork and personal and professional growth

We promise to greatly exceed customers' expectations. We

- Listen to those we serve in order to improve our operations and adapt to changing needs
- Forge partnerships to improve our services
- Value each employee's contribution to achieving this mission

I. GENERAL PROVISIONS

1. APPLICABILITY

These regulations are applicable to all public agencies within the State of Missouri responsible for providing special education and related services for students with disabilities. This includes state agencies, charter schools, and state and local juvenile and adult correctional facilities. Any exceptions for specific public agencies are noted in relevant sections.

2. AMENDMENTS

Any proposed changes in these regulations shall be in accordance with the provisions of the Administrative Procedures Act.

3. DEFINITIONS

The terms defined below are found throughout these regulations. All of the following definitions are cited in the Individuals with Disabilities Education Act (IDEA) unless otherwise noted.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes each of the following, if it meets the definition of specially designed instruction:

- A. Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
- B. Travel training; and,
- C. Vocational education.

No cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

Physical education means the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports), and includes special physical education, adapted physical education, movement education, and motor development.

Specially designed instruction means adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live, and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes, school health services, social work services in schools, and parent counseling and training.

- A. Audiology includes identification of children with hearing loss, determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; creation and administration of programs for prevention of hearing loss; counseling and guidance of children, parents, and teachers regarding hearing loss, and determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- B. Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
- C. Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- D. Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- E. Occupational therapy means services provided by a qualified occupational therapist; and includes improving, developing or restoring functions impaired or lost through illness, injury, or deprivation, improving ability to perform tasks for independent functioning if functions are impaired or lost, and preventing, through early intervention, initial or further impairment or loss of function. In Missouri, this definition includes licensed occupational therapist assistants practicing under the supervision of a licensed occupational therapist.
- F. Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school,

home, and community; and includes teaching students the following, as appropriate:

- 1) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
- 2) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
- 3) To understand and use remaining vision and distance low vision aids; and,
- 4) Other concepts, techniques, and tools.

- G. Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- H. Physical therapy means services provided by a qualified physical therapist. In Missouri, this definition includes physical therapy assistants practicing under the supervision of a licensed physical therapist.
- I. Psychological services includes administering psychological and educational tests, and other assessment procedures, interpreting assessment results, obtaining, integrating, and interpreting information about child behavior and conditions relating to learning, consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations, planning and managing a program of psychological services, including psychological counseling for children and parents, and assisting in developing positive behavioral intervention strategies.
- J. Recreation includes assessment of leisure function, therapeutic recreation services; recreation programs in schools and community agencies, and leisure education.
- K. Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- L. School health services means services provided by a qualified school nurse or other qualified person.
- M. Social work services in schools includes preparing a social or developmental history on a child with a disability, group and individual counseling with the child and family, working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school, mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program, and assisting in developing positive behavioral intervention strategies.

- N. Speech-language pathology services includes identification of children with speech or language impairments, diagnosis and appraisal of specific speech or language impairments, referral for medical or other professional attention necessary for the habilitation of speech or language impairments, provision of speech and language services for the habilitation or prevention of communicative impairments, and counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- O. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

Assistive technology device means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

The term includes:

- A. the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- B. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- C. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
- D. coordinating and using other therapies, interventions, or services the assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- E. training or technical assistance for a child with a disability, or if appropriate, that child's family; and,
- F. training or technical assistance for professionals (including individuals providing education or rehabilitation service), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of children with disabilities.

Transition services means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's strengths, preferences, and interests, and shall include instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education if provided as specially designed instruction, or related services if required to assist a student with a disability to benefit from special education.

Parent means a natural, adoptive, or foster parent of a child; a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; or an individual who is legally responsible for the child's welfare. Missouri allows foster parents to act as a parent.

Public agency includes the SEA, LEAs, ESAs, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Ward of the State means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency, except that the term does not include a foster child who has a foster parent who meets the definition of a parent.

II. CONFIDENTIALITY

1. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

It is the policy of the Missouri Department of Elementary and Secondary Education that all information collected and maintained by LEAs/public agencies responsible for the provision of special education and related services for children with disabilities will be protected to ensure the confidentiality of all such information consistent with the specific procedures established in this section.

Definitions

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Educational records" means records maintained by a public agency responsible for the provision of general education or special education and related services that pertain to the special education and related services provided to a student with a disability. The term includes medical, psychological, and educational reports but does not include records of instructional, educational, ancillary, supervisory, and administrative personnel which are the sole possession of the maker and which are not accessible or revealed to any other personnel, except another person who performs on a temporary basis the duties of the individual who made the record. The term includes test instruments or protocols/score sheets and a record of the test results. Copies of test protocols will only be provided if the failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the educational records. The term does not include certain records maintained by a law enforcement unit of a public agency or records maintained about a student with a disability as an employee of the public agency.

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information or from which information is obtained under Part B of IDEA.

Notice to Parents (34 CFR 300.561)

The Department of Elementary and Secondary Education requires each LEA/public agency to give adequate notice to fully inform parents about LEA's/public agency's responsibility to identify, locate, and evaluate children with disabilities who are residents of the LEA/public agency. The notice will be provided in the native language of the parent. The notice shall include:

- A. the different languages the notice is available in;
- B. a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the LEA/public agency intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- C. a summary of the policies and procedures which the LEA/public agency must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and,
- D. a description of all of the rights of parents and children regarding this information, including the rights under Section 444 of the General Educational Provisions Act

and Part 99 of this Title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

Before any major identification, location, or evaluation activity is initiated, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the LEA of the activity. Each LEA is required to conduct the following activities annually prior to November 1:

- A. publish one (1) public notice in local newspapers which describes the responsibility of the local board to conduct the census and the data elements to be obtained;
- B. air one (1) notice on local radio or television which describes the responsibilities of the local board to conduct the census and the data elements to be obtained; and,
- C. place posters/notices in all administrative offices of each building operated by the school that describe the responsibilities of the local board to conduct the census and the data elements to be obtained.

Access Rights (34 CFR 300.562)

Each local school district/public agency shall permit parents to inspect and review any educational records relating to their children that are collected, maintained, and used by the local school district/public agency regarding their student without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, placement or provision of FAPE and, in no case, more than 45 days after the request has been made. The right to review and inspect records includes:

- A. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- B. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and,
- C. the right to have a representative of the parent inspect and review the records.

An agency may presume that the parent has authority to inspect and review records relating to his/her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

Record of Access (34 CFR 300.563)

Each participating agency shall maintain a record of all parties obtaining access to education records collected, maintained or used under Part B of IDEA (except access by parents and authorized employees of the participating agency). The record will include:

- A. name(s) of party;
- B. the date access was given; and,
- C. purpose for which the party is authorized to use the records.

The record of access shall be maintained in each file of each pupil that contains confidential information. The agency is required to maintain a list of those employees who have access to educational records and maintain the list in a central location. Only employees of the agency who have a legitimate need to access education records shall be included on the list.

Records of More Than One Student (34 CFR 300.564)

If any education record includes information on more than one (1) child, the agency shall allow parents to inspect and review only the information relating to their child or to be informed of the specific information.

List of Types and Location of Information (34 CFR 300.565)

Each participating agency shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency.

Fees (34 CFR 300.566)

Each participating agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

Amendment of Records at Parent Request and Hearing Rights (34 CFR 300.567)

A parent who believes that information in the educational records collected, maintained or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

The school district/agency shall reach a decision regarding the request within a reasonable period of time, but no more than 45 calendar days after receipt of the request. If the agency agrees to the requested amendment, the records in question shall be amended as agreed to. If the agency denies the request for an amendment, the agency shall:

- A. inform the parent of the denial and advise the parent of their right to a hearing; and
- B. advise the parent/guardian that they have a right to request a hearing, before an official of the district or agency, if they desire to further challenge the data contained within the student's file. This hearing shall be held in conformity with the requirements outlined in Section 99.22 of the Family Educational Rights and Privacy Act regulations.

If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the school district or agency shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the agency shall inform the child's parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reason for disagreeing with the decisions of the agency. Any explanation placed in the records of the child must be maintained by the agency as a part of the child's records as long as the record or contested portion is maintained by the agency. If the record of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

Consent (34 CFR 330.571)

The school district or agency shall require written consent from the parent before it discloses information from the educational records of a child unless it is authorized to do so under Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974.

Written consent from the parent shall be obtained before any personally identifiable information is:

- A. disclosed to anyone other than officials of participating agencies collecting or using such data; or,
- B. used for any purpose other than meeting any requirement under IDEA.

In the event parent consent cannot be obtained, due process hearing procedures may be invoked by the school district or agency.

If parent's failure to give consent would constitute neglect as defined in the Child Abuse and Neglect Laws of Missouri, Section 210.110 RSMo, a report should be made by the LEA to the proper authorities.

Safeguards (34 CFR 300.572)

Each participating agency shall protect the confidentiality of personally identifiable information of collection, storage, disclosure, and destruction stages. To assure protection, the district/agency shall:

- A. appoint one (1) official at each participating agency to be responsible for ensuring the confidentiality of any personally identifiable information;
- B. provide training or information to all persons collecting or using personally identifiable information in the state's policies and procedures governing such information; and,
- C. maintain, for public inspection, a current list of the names and positions of those employees within the public agency who may have access to personally identifiable data.

Destruction of Data (34 CFR 300.573)

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parent subject to the federal requirement that records be maintained for a minimum of three (3) years from the date the child no longer receives special education and related services. However, a permanent record containing the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be retained without time limitation.

Children's Rights (34 CFR 300.574)

All rights of privacy and educational records indicated herein with regard to parents shall pass to the child upon reaching age 18, except in the case of a child with a disability who is legally determined to be incompetent to make such decisions for himself/herself and for whom legal guardianship or conservatorship is required beyond

the age of 18. In those instances, the legally established guardian or conservator shall maintain the rights to privacy as outlined in this section.

Parents of children who reach age 18 but who are still dependents, as defined in Section 152 of the Internal Revenue Service Code of 1954, maintain the right to inspect and review the child's educational record.

Enforcement (34 CFR 300.575)/Failure to Provide FAPE

The Department of Elementary and Secondary Education, through the process of monitoring, compliance plans and/or assurance statements, will assure that each participating district/agency receiving and/or eligible for funds from federal sources will have all such policies and procedures, as described herein, in effect. In the event a district/agency fails to comply with the provisions of this part, the Department of Elementary and Secondary Education may initiate actions to withhold the payment of federal funds available to the district agency under IDEA and/or the payment of state funds available to support the special education services. The district/agency shall maintain rights provided under Regulation VII.1. contained in this State Plan.

Failure to Provide FAPE

The Missouri Department of Elementary and Secondary Education (DESE) may withhold, in part or whole, state and/or federal special and general education funds when a local education agency (LEA) is determined to be either unwilling or unable to provide FAPE. Such determination will be based on a LEA's refusal or failure to comply with a corrective action or hearing decision as ordered by the DESE in:

- A. a monitoring report stemming from a monitoring for compliance with IDEA, Part B; or,
- B. a child complaint decision in which the LEA has been found out of compliance; or,
- C. a due process hearing decision of a state level hearing.

In each of the above, corrective actions are expected to be achieved within a given timeline, or in the case of a due process decision, implementation is expected to be achieved within a given timeline. Such timelines in the case of a monitoring report or a child complaint decision may be extended by the DESE. However, if the DESE determines it is unreasonable to further extend, or if the DESE attempted to provide technical assistance to the LEA to accomplish the corrective action to no avail, the DESE may determine the LEA is unable or unwilling to provide FAPE.

The DESE will determine the amount of funding to be withheld on a case-by-case basis. The DESE will determine the amount deemed necessary to enforce the decisions rendered in the actions described above. The DESE will notify the LEA in writing of the specific action it has failed to correct, the source and amount of funds that will be withheld, and the date that the withholding of funds will begin. See Regulation IX.3., Policy 6, Fiscal Procedures, Withholding of Payment.

The hearing procedure described in Regulation VII.1. of this State Plan, for disapproval of LEA application, is incorporated herein by reference.

III. IDENTIFICATION AND EVALUATION

1. CHILD FIND

It is the policy of the State of Missouri that all children with disabilities, residing in the state, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated. This requirement applies to highly mobile children with disabilities (such as migrant and homeless children) and children who are suspected of being a child with a disability and in need of special education even though they are advancing from grade to grade.

The Department of Elementary and Secondary Education is the agency responsible for coordinating the planning and implementation of the child find activities for children birth to twenty-one (21).

The following state agencies participate in the planning and implementation of child find activities.

Department of Mental Health assists in identification and location of infants, toddlers, and children with suspected disabilities through its Regional Centers for the Developmentally Disabled, State Habilitation Centers, and State Hospitals. Referrals are made to local school districts and the Part C system.

Department of Health assists in identification and location of infants, toddlers, and children with suspected disabilities through its Title V and Head Injury Programs. Referrals are made to local school districts and to the Part C system.

Department of Social Services

- A. The Division of Family Services assists in the identification of infants, toddlers and children with suspected disabilities. Referrals are made to local school districts and to the Part C system.
- B. Rehabilitation Services for the Blind identifies, locates, and refers infants, toddlers, and children who have visual problems. Referrals are made to either local school districts or to the Part C system.
- C. The Division of Youth Services identifies students with disabilities and who are placed within the care and custody of the Missouri Division of Youth Services. Special education services are provided for these students within the Division's facilities.

Department of Corrections provides for the identification of and special education services to inmates with disabilities under age twenty-one (21) years, who are placed within its jurisdiction.

Missouri Department of Elementary and Secondary Education requires local school districts to annually assist in Child Find by conducting the following activities prior to November 1 each year:

- A. Publishing one (1) public notice in local newspapers that describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21). The notice must also describe the LEA's

- responsibility to refer infants and toddlers suspected of having a disability to the state Part C early intervention system.
- B. Airing one (1) public notice on local radio and/or television stations, during general viewing/listening hours, which describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).
 - C. Placing posters/notices in all administrative offices of each building operated by the school district that describes the district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).
 - D. Providing written information through general distribution to the parents/guardians of students enrolled in the school district which describes the school district's responsibility to provide special education and related services to children ages three (3) to twenty-one (21).

The Department of Elementary and Secondary Education will monitor the implementation of the Child Find requirements. Such reviews will include:

- A. approval of each local district's Compliance Plan documentation; and,
- B. a review of data from the annual census reported by each district.

All data collected and used to meet Child Find requirements is subject to confidentiality requirements of 34 CFR 300.560 - 300.577.

LISTED BELOW IS THE STATUTE OF THE STATE OF MISSOURI WHICH PROVIDES THE LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY FOR CHILD FIND:

(Section 162.695(1), RSMo)

2. DEFINITIONS AND CRITERIA FOR DETERMINATION OF ELIGIBILITY

The Individuals with Disabilities Education Act (IDEA) defines students with disabilities as those children, ages 3 to 21, who have been properly evaluated as having Mental Retardation, Hearing Impairments and Deafness, Speech or Language Impairments, Visual Impairments, including Blindness, Emotional Disturbance, Orthopedic Impairments, Autism, Traumatic Brain Injury, Other Health Impaired, a Specific Learning Disability, Deaf Blindness, or Multiple Disabilities and, who because of that disability, require special education and related services. As allowed under 34 CFR 300.7 implementing IDEA, the State of Missouri also defines a child with a disability to include children ages 3 through 5 who have been properly identified as a young child with a developmental delay.

No child may be determined to be eligible if the determinant factor for that eligibility determination is lack of instruction in reading, math, or limited English proficiency.

Several conditions may be diagnosed by other professionals such as physicians, psychologists, etc. that are not specified by IDEA. These may include such conditions as diabetes, sickle cell anemia, leukemia, etc. Students who present significant learning problems by virtue of the condition may demonstrate eligibility for special education under one or more of the disabilities identified above.

Children with disabilities who are not eligible for special education and related services under IDEA may be entitled to services and protections under Section 504 of the Rehabilitation Act of 1973. School districts may not use IDEA funds or Exceptional Pupil Aid to serve students found eligible under Section 504 but not eligible under IDEA. For further information regarding school districts' responsibilities under Section 504, the reader is referenced to the document entitled "Student Access" published by the Department of Elementary and Secondary Education, the regulations for Section 504 of the Rehabilitation Act of 1973, and/or to the United States Department of Education, Office for Civil Rights.

Alternative Method for Eligibility Determination

Public agencies may submit a request to the DESE for approval of an alternative eligibility determination methodology that does not identify students as eligible based upon the discrete categories used in IDEA. The alternative methodology must meet the intent of IDEA for children with disabilities and cannot be more restrictive or expansive than the criteria established by the DESE as follows in this section.

Requests must be in writing and focus on how the eligibility process will incorporate the child's educational strengths and needs as well as their involvement and progress in the general education curriculum. The alternative method cannot be implemented by public agencies unless the DESE has granted the request. There is no appeal process for requests that are denied.

Disability Categories, Definitions, and Criteria in alphabetical order:

- A. Autism
- B. Deaf/Blindness
- C. Emotional Disturbance
- D. Hearing Impairment and Deafness
- E. Mental Retardation
- F. Multiple Disabilities
- G. Orthopedic Impairment
- H. Other Health Impairments
- I. Specific Learning Disabilities
- J. Speech or Language Impairment
- K. Traumatic Brain Injury
- L. Visual Impairment/Blind
- M. Young Child with a Developmental Delay

Autism Definition

"Autism" means a developmental disability significantly affecting verbal or nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability as defined in this document.

A child who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria above are satisfied.

Criteria for Initial Determination of Eligibility

A child displays autism when:

- A. Through evaluation that includes a review of medical records, observation of the child's behavior across multiple environments, and an in-depth social history, the following behaviors are documented:
 - 1) Disturbances of speech, language-cognitive, and nonverbal communication: The child displays abnormalities that extend beyond speech to many aspects of the communication process. Communicative language may be absent or, if present, language may lack communicative intent. Characteristics may involve both deviance and delay. There is a deficit in the capacity to use language for social communication, both receptively and expressively.
 - 2) Disturbance of the capacity to relate appropriately to people, events, or objects: The child displays abnormalities in relating to people, objects, and events. There is a deficit in the capacity to form relationships with people. The capacity to use objects in an age appropriate or functional manner may be absent, arrested, or delayed. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.
- B. The condition adversely affects the child's educational performance.
- C. The autism is not a result of an emotional disability as defined in this document.

Other Behaviors Which the Child May Exhibit Include:

- A. Disturbance of developmental rates and sequences: The child may also exhibit delays, arrests, or regressions in physical, social, or learning skills. Areas of precocious skill development may also be present, while other skills may develop at normal or extremely depressed rates. The order of skill acquisition frequently does not follow normal developmental patterns.
- B. Disturbances of responses to sensory stimuli: The child's behavior may also range from being hyperactive to being unresponsive to people and objects in their environment and can alternate between these two (2) states over periods ranging from hours to months. Disturbances may be apparent in auditory, visual, olfactory, gustatory, tactile, and kinesthetic responses. The child may respond to stimulation inappropriately and in repetitive or nonmeaningful ways.

Deaf/Blindness Definition

“Deaf/Blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Criteria for Initial Determination of Eligibility

A child is deaf/blind when:

- A. both visual and hearing impairments are present;

- B. the impairments together cause severe communication, developmental, and educational needs.

Emotional Disturbance Definition

“Emotional Disturbance” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- A. an inability to learn that cannot be explained by intellectual, sensory or health factors;
- B. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- C. inappropriate types of behavior or feelings under normal circumstances;
- D. a general pervasive mood of unhappiness or depression; and,
- E. a tendency to develop physical symptoms or fears associated with personal or social problems.

The term includes schizophrenia, but does not apply to children who are socially maladjusted unless it is determined they have an emotional disturbance.

Criteria for Initial Determination of Eligibility

A child displays an emotional disturbance when:

- A. through evaluation procedures that must include observation of behavior in different environments, and an in-depth social history the child displays one of the following characteristics:
 - 1) an inability to learn that cannot be explained by intellectual, sensory or health factors;
 - 2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - 3) inappropriate types of behavior or feelings under normal circumstances;
 - 4) a general pervasive mood of unhappiness or depression; and,
 - 5) a tendency to develop physical symptoms or fears associated with personal or social problems.
- B. the characteristic(s) must have existed to a marked degree and over an extended period of time. In most cases, an extended period of time would be a range from two (2) through nine (9) months depending upon the age of the child and the type of behavior occurring. For example, a shorter duration of disturbance that interrupts the learning process in a younger student might constitute an extended period of time. Difficulties may have occurred prior to the referral for evaluation;
- C. the emotional disturbance adversely affects the child’s educational performance.

NOTE: Manifestations of an emotional disturbance can be observed along a continuum ranging from normal behavior to severely disordered behavior. Children who experience and demonstrate problems of everyday living and/or those who develop transient symptoms due to a specific crisis or stressful experience are not considered to have an emotional disturbance.

Hearing Impairment and Deafness Definition

“Hearing Impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance, but is not included in the following definition for deafness.

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

Criteria for Initial Determination of Eligibility

A child displays a Hearing Impairment when:

- A. a hearing impairment has been diagnosed by an audiologist;
- B. the hearing impairment adversely affects the child's educational performance.

Mental Retardation Definition

"Mental Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affects a child's educational performance.

Criteria for Initial Determination of Eligibility

A child displays mental retardation when:

- A. the child performs 2.0 Standard Deviations below their peers of equivalent age, ethnic, and cultural background when measured by a standardized instrument of cognitive ability;
- B. the child displays adaptive behavior consistent with measured cognitive ability. Adaptive behavior refers to the effectiveness with which a student meets the standards of personal independence and social responsibility expected of his/her age and cultural group. There should be a significant positive correlation between the student's intellectual ability and adaptive behavior. If not, the team must give careful consideration to other evaluative information and utilize professional judgment to determine the student's level of cognitive and adaptive functioning;
- C. the disability adversely affects the child's educational performance.

Professional Judgment

A child may also be deemed eligible if the child displays, through formal and informal assessment, a significant discrepancy even though the deviations do not fall below the criterion range. In such cases, sufficient data must be present in the evaluation report to document the existence of a significant discrepancy.

Multiple Disabilities Definition

"Multiple Disabilities" means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf/blindness.

Criteria for Initial Determination of Eligibility

A child displays multiple disabilities when:

- A. concomitant impairments occur;
- B. the impairments together cause severe educational needs.

Orthopedic Impairment Definition

“Orthopedic Impairment” means a severe orthopedic impairment that adversely affects a child’s educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.) impairments caused by disease (poliomyelitis, bone tuberculosis, etc) and impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractions).

Criteria for Initial Determination of Eligibility

A child displays a physical impairment when:

- A. an orthopedic impairment has been diagnosed by a licensed physician;
- B. the physical impairment adversely affects the child’s educational performance.

Other Health Impairment Definition

“Other Health Impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, and adversely affects a child’s educational performance.

Criteria for Initial Determination of Eligibility

A child displays a Health Impairment when:

- A. a health impairment has been diagnosed by a licensed physician, licensed psychologist, licensed professional counselor, or licensed clinical social worker;
- B. the health impairment adversely affects the child's educational performance.

Specific Learning Disability Definition

“Specific Learning Disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or environmental, cultural, or economic disadvantage.

Criteria for Initial Determination of Eligibility

A child has a specific learning disability when:

- A. the child does not achieve commensurate with his or her age and ability levels in one or more areas listed in B below if provided with learning experiences appropriate for the child's age and ability level;
- B. the child displays observable characteristics that indicate deficits in basic psychological processing in one or more of the following academic areas.

Basic reading skill	Mathematics reasoning
Reading comprehension	Listening comprehension
Written expression	Oral expression
Mathematics calculation	

In determining whether a child has a specific learning disability, a responsible public agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures or may require a severe discrepancy between achievement and intellectual ability (of 1.5 standard deviation).

- C. the child's learning disability is not PRIMARILY the result of:
 - 1) a visual, hearing, or motor disability;
 - 2) mental retardation;
 - 3) emotional disturbance; or,
 - 4) environmental, cultural or economic disadvantage.

Professional Judgment

If a responsible public agency uses a severe discrepancy method: A child who does not display a discrepancy of at least 1.5 standard deviations as defined in B above, may nonetheless be deemed to have a specific learning disability if 1) the child meets the other criteria of this rule; and 2) based upon professional judgment and review of formal and informal assessments, the evaluation team concludes that a severe discrepancy exists. In such cases, sufficient data must be presented in the evaluation report to document the existence of a specific learning disability.

If the agency does not use a severe discrepancy method, professional judgment can only be used if the child does not respond to scientific, research-based intervention.

Speech or Language Impairment Definition

“Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment or a voice impairment, that adversely affects a child’s educational performance.

Criteria for Initial Determination of Eligibility - Language

A language disorder is present when:

- A. the child consistently exhibits inappropriate use in any of the structures of language (e.g., morphology, syntax, semantics, and pragmatics) as measured by language sampling or other clinical tasks;

- B. the child's language functioning is significantly below the child's abilities as measured by two (2) or more standardized language assessments. Significantly below is defined as two (2) standard deviations below the mean for children 3 to 5 years of age but not eligible for kindergarten; one standard deviation below cognitive ability for children who are kindergarten age eligible through age 8 and 1.5 standard deviation below cognitive ability for children who are age 9 and older;
- C. the language disorder adversely affects the child's educational performance;
- D. the language disorder is not a result of dialectal differences or second language influence;

Professional Judgment

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a language deficit is present even though the standard scores do not meet the criteria in B above. In such cases, sufficient data must be presented in the evaluation report to document the existence of the language deficit.

Criteria for Determination of Initial Eligibility - Sound System Disorder

A Sound System Disorder, which includes articulation and/or phonology, is present when:

- A. the student exhibits a delay of correct sound production based on accepted normative data. The child's sound system is evaluated based on a single word test and/or a sentence/phrase repetition task and a connected speech sample;
- B. consideration must be given to the type of error recorded (substitutions, omissions, distortions and/or additions). These errors may be described as single sound errors or errors in phonological patterns;
- C. a Sound System Disorder may also be present if multiple errors in the child's speech compromise intelligibility and/or listener perception even though the recorded errors are considered within normal developmental guidelines;
- D. the Sound System Disorder adversely affects the child's educational performance;
- E. the sound system disorder is not a result of dialectal differences or second language influence.

The evaluation report must include sufficient data to document the existence of the Sound System Disorder and if, during the collection and analysis of the data, the child's language abilities appear to be impaired, a language evaluation will need to be completed prior to a designation of language disorder.

Criteria for Initial Determination of Eligibility - Fluency

A fluency disorder is present when:

- A. the child consistently exhibits one or more of the following symptomatic behaviors of dysfluency:
 - 1) sound, syllabic, or word repetition;
 - 2) prolongations of sounds, syllables, or words;
 - 3) blockages; or,
 - 4) hesitations;

- B. the child's fluency is significantly below the norm as measured by speech sampling in a variety of contexts. A significant discrepancy is defined as five (5) or more dysfluencies per minute or a 10 percent dysfluency rate and distracting to the listener;
- C. the fluency disorder adversely affects the child's educational performance

Professional Judgment

A child may also be deemed eligible if the evaluation documents through formal and informal assessment that a fluency deficit is present even though the criterion in B above is not met. In such cases, sufficient data must be presented in the evaluation report to document the existence of the fluency deficit.

Criteria for Initial Determination of Eligibility - Voice

A voice disorder is present when:

- A. the child consistently exhibits deviations in one or more of the parameters of voice: pitch, quality, or volume;
- B. the child's voice is discrepant from the norm as related to his/her age, sex, and culture and is distracting to the listener;
- C. the voice disorder is not the result of a temporary problem such as: normal voice changes, allergies, colds, or other such conditions;
- D. the voice disorder adversely affects the child's educational performance.

Traumatic Brain Injury (TBI) Definition

“Traumatic Brain Injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, such as, cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychological behavior, physical functions, information processing and speech. The term does not include brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

Initial Eligibility Criteria for Traumatic Brain Injury

A child has a Traumatic Brain Injury when:

- A. a traumatic brain injury/head injury has been diagnosed by a licensed physician or through a neuropsychological assessment;
- B. the student's educational performance is adversely affected by deficits in acquisition, retention, and/or generalization of skills. Students with a brain injury may have rapidly changing profiles, therefore, educational assessment should include current documentation of the student's functional capabilities and indicate deficits in one or more of the following areas:
 - 1) building or maintaining social competence;
 - 2) performance of functional daily living skills across settings;
 - 3) the ability to acquire and retain new skills, and,
 - 4) the ability to retrieve prior information.

Professional Judgment

A child may also be deemed eligible if the child displays characteristics of TBI even though a medical diagnosis of head injury has not been made by a physician. In such cases, substantial data to document the medical basis for a head injury must be present in the evaluation report.

Visual Impairment/Blindness Definition

Visual Impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Criteria for Initial Determination of Eligibility

A child displays a Visual Impairment when:

- A. a visual impairment or a progressive vision loss has been diagnosed by an optometrist or ophthalmologist;
- B. visual acuity has been determined to be:
 - 1) for visual impairment, of 20/70 to 20/200 in the better eye with best correction by glasses;
 - 2) for blindness, of 20/200 or less in the better eye after best correction by glasses or a visual field measuring 20° or less.
- C. the visual impairment adversely affects the child's educational performance.

Young Child with a Developmental Delay Definition

“Young Child with a Developmental Delay” means a child ages 3 through 5 who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who need special education and related services.

Criteria for Initial Eligibility for Young Children with a Developmental Delay

A child has a developmental delay when:

For children ages 3 through 5 (not kindergarten age eligible)

- A. The child's development is at or below 1.5 standard deviations, or equivalent levels, of the mean in any TWO areas of development OR at or below 2.0 standard deviations, or equivalent levels, in any ONE area of development. Areas of development that can be used to determine eligibility include physical, cognitive, communication, social/emotional or adaptive.
- B. The child needs special education and related services.

Professional Judgment

A child may also be deemed eligible when:

- A. the evaluation report documents through formal and informal assessment that a significant deficit exists and a child is eligible for services even though the standard scores, or equivalent levels, do not meet the stated criterion levels in A above, or,
- B. the team may determine that a child who is functioning above the stated criterion level and because of intensive early intervention, is eligible for services based on expected regression if services were to be terminated.

For children ages 5 (kindergarten eligible)

- A. Children kindergarten age eligible may continue eligibility as a Young Child with a Developmental Delay if they were identified as such prior to attaining kindergarten age eligibility.

3. PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY

The Missouri Department of Elementary and Secondary Education ensures that each public agency establishes and implements procedures for evaluation and determination of eligibility that meet the requirements of this section.

Initial Evaluation (34 CFR 300.531)

Each public agency shall conduct a full and individual initial evaluation, in accordance with 34 CFR 300.532 and 34 CFR 300.533, before the initial provision of special education and related services to a child with a disability. This may or may not include additional testing as determined by the evaluation team members.

Evaluation Procedures (34 CFR 300.532)

Each public agency shall ensure, at a minimum, that the following requirements are met:

- A. Tests and other evaluation materials used to assess a child under Part B of the Act are selected and administered so as not to be discriminatory on a racial or cultural basis, are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so, and materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
- B. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

- C. Any standardized tests that are given to a child have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test or the method of test administration) must be included in the evaluation report.
- D. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- E. Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- F. No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
- G. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- H. In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- I. The public agency uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- J. The public agency uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

Determination of Needed Evaluation Data (34 CFR 300.533)

As part of an initial evaluation (if appropriate) and as part of any reevaluation under Part B of IDEA, a group that includes the individuals described in 34 CFR 300.344 (the IEP team), and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and observations by teachers and related services providers. On the basis of that review, and input from the child's parents, the group shall identify what additional data, if any, are needed to determine:

- A. whether the child has a particular category of disability, or in case of a reevaluation of a child, whether the child continues to have such a disability;

- B. the present levels of performance and educational needs of the child;
- C. whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and,
- D. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

The group making these decisions may conduct its review without a meeting. The public agency shall administer tests and other evaluation methods as may be needed to produce the data identified above.

If the determination of the group is that no additional data are needed to determine whether the child continues to be a child with a disability, the public agency shall notify the child's parents of that determination and the reasons for it, and of the right of the parents to request an assessment to determine whether, for purposes of services under the Individuals with Disabilities Education Act, the child continues to be a child with a disability. If the parent requests assessment, even though the determination has been made that no additional data are needed, the public agency must grant the request if the issue is continued eligibility under Part B of IDEA.

Determination of Eligibility (34 CFR 300.534) Report to Parents

Upon completing the administration of tests and other evaluation materials, a group of qualified professionals, which includes the parent of the child, must determine whether the child is a child with a disability. The public agency must provide a copy of the evaluation report which documents the determination of eligibility to the parent.

A child may not be determined to be eligible for special education if the determinant factor for that eligibility determination is lack of instruction in reading or math or Limited English Proficiency, or if the child does not otherwise meet the eligibility criteria.

A public agency must evaluate a child with a disability before determining that the child is no longer a child with a disability. As part of that evaluation process, the group must determine whether additional data is needed and, if so, shall identify what additional data is needed. Assessment to obtain that data must then be conducted. An evaluation is not required before the termination of a student's eligibility under Part B of the Individuals with Disabilities Education Act due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law (age 21).

Procedures for Determining Eligibility and Placement (34 CFR 500.535)

In interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the educational needs of the child, each public agency shall draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, and ensure that information obtained from all of these sources is documented and carefully considered.

If a determination is made that a child has a disability and needs special education and related services, an Individualized Education Program (IEP) must be developed for the child.

Determination of Eligibility for Young Children Ages 3 through 5

- A. School districts shall, through approved district policy, determine eligibility for children ages 3 through 5 (not kindergarten age eligible) using one of the following methods:
 - 1) Identify all children using any of the disability categories except that of Young Child with a Developmental Delay (YCDD); or,
 - 2) Identify all children as eligible using only the category of Young Child with a Developmental Delay (YCDD); or,
 - 3) Identify all children as eligible using any of the disability categories including that of Young Child with a Developmental Delay (YCDD).
- B. For a child with a disability who becomes Kindergarten age eligible (age 5 by August 1), districts shall, through approved district policy, choose one of the following methods to determine continuing eligibility for special education:
 - 1) If the district selected methods A. 2) or A. 3) above, they may either
 - a) continue a child as eligible under the Young Child with a Developmental Delay (YCDD) or apply any of the other disability categories; or,
 - b) apply any disability category other than Young Child with a Developmental Delay (YCDD).
 - 2) If the district selected method A.1) above, all children will continue to be identified as eligible using any disability category other than YCDD.
- C. Children who are kindergarten age eligible (age 5 by August 1) and have not been identified as eligible for special education in prior years must meet criteria of any disability category other than Young Child with a Developmental Delay.
- D. Children who are first grade age eligible (age 6 by August 1) must meet criteria of any disability category other than Young Child with a Developmental Delay.

Determination of Eligibility for Children with Learning Disabilities

The determination of whether a child suspected of having a specific learning disability is a child with a disability must be made by the child's parents and a team of qualified professionals that must include:

- A. the child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; for a child of less than school age, an individual qualified by the DESE to teach a child of his or her age;
- B. at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher;
- C. at least one team member other than the child's regular teacher shall observe the child's academic performance in the regular setting; and,
- D. in the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

Evaluation Timelines

The public agency shall provide the parent with a Notice of Intent to Evaluate as soon as possible, but within thirty (30) calendar days of the date of referral for evaluation. Delays beyond this time may be permitted for just cause (school breaks for summer or holidays, student illness, etc.) and documented in the student's record.

The evaluation shall be completed, and a decision regarding eligibility rendered within sixty (60) calendar days following parent consent or notice, as the case may be. Delays beyond this time may be permitted for just cause and documented in the student's record.

Reevaluation timelines are specified in the following section on reevaluation.

Parent Request for Evaluation

Parents may request an evaluation for their child. If the public agency receives such a request, the district shall:

- A. accept the request and proceed with the evaluation process in accordance with the timelines and requirements set forth in this section; or,
- B. refuse the request and provide the parent with Notice of Action Refused and a copy of procedural safeguards available to the parent to contest such a decision.

Evaluation Report

Each public agency shall develop a written Evaluation Report for all initial evaluations and any reevaluations which required additional testing.

The evaluation report must include:

- A. a statement of whether the child has a specific disability as defined in Regulation III.2. of this document;
- B. a synthesis of information from the evaluation considering all areas of functioning;
- C. the basis for making the determination of eligibility for a disability;
- D. a statement that the disability is not a result of lack of instruction in reading or math, or Limited English proficiency;
- E. a list of the individuals who were in attendance at the eligibility determination meeting and their role.

The Evaluation Report for students identified as Specific Learning Disabled must include items A through D above and the following:

- F. relevant behavior noted during the observation of the child and the relationship of that behavior to academic functioning;
- G. educationally relevant medical findings, if any;
- H. if eligibility determined using the discrepancy model, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
- I. if eligibility determined through a process that determines if the child responds to scientific, research-based intervention, a description of the interventions used, the length of time attempted, and the child's response;
- J. the determination of the team concerning the effects of environmental, cultural, or economic disadvantage; and,
- K. each team member shall certify in writing whether the report reflects his/her conclusion; if it does not reflect his/her conclusion, the team member must submit a separate statement presenting his/her conclusions.

Reevaluation (34 CFR 300.536)

Each public agency shall ensure that the Individualized Education Program (IEP) of each child with a disability is reviewed annually and in accordance with Regulation IV.2. of this document, that a reevaluation of each child, in accordance with 34 CFR 300.532-300.535, is conducted if the public agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and at least once every three years unless the parent and the local educational agency agree that a reevaluation is unnecessary. If the parent and local educational agency agree that a triennial evaluation is needed, under no circumstances can the reevaluation exceed three years. For parent or district requested reevaluations, evaluation timelines specified previously in this section must be followed.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE THE LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO PROCEDURES FOR EVALUATION AND DETERMINATION OF ELIGIBILITY:

*(Section 162.700(2), RSMo)
(Section 162.945, RSMo)
(Section 162.950(2), RSMo)*

IV. FAPE/IEP/LRE

1. FREE APPROPRIATE PUBLIC EDUCATION

It is the policy of the State of Missouri that all children with disabilities between the ages of three (3) and twenty-one (21) years as prescribed by Missouri statutes and residing in the state have a right to a free appropriate public education (FAPE), including children with disabilities who have been suspended or expelled from school.

The term "students with disabilities" as used in this document includes all students defined as "handicapped" and "severely handicapped" in accordance with 162.675(2)(3) RSMo and the Individuals with Disabilities Education Act (IDEA). Definitions of each disabling condition are found in Regulation III. 2. of this document.

A free appropriate public education (FAPE) is defined to include regular and special education and related services which:

- A. are provided at public expense, under public supervision and direction, and without charge to the parent;
- B. meet the educational standards of the State Education Agency pertaining to the education of students with disabilities;
- C. includes preschool, elementary school, secondary school education; and,
- D. are provided in conformity with the individualized education program (IEP).

FAPE for Children Begins at Age 3

The State of Missouri ensures that FAPE is available to each eligible child residing in the state no later than the child's 3rd birthday. An IEP must be in effect by the child's third birth date. If the child's 3rd birth date occurs during the summer, the child's IEP team shall determine the date when the services under the IEP will begin. Regulation IV.4. of this State Plan outlines procedures that the Part C system must complete to assure a smooth transition for children eligible for Part B services at age 3.

FAPE for Children Suspended or Expelled from School

A public agency is not required to provide services to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year if services are not provided to a child without disabilities who has been similarly removed.

In the case of a child with a disability who has been removed for more than ten (10) school days in a school year, the public agency, for the remainder of the removals must:

- A. provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the child's IEP if the removal is:
 - 1) under the school personnel's authority to remove for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement; or
 - 2) for behavior that is not a manifestation of the child's disability and results in a disciplinary change of placement.

- B. Provide services consistent with 34CFR 300.522 (see page 59) regarding determination of an appropriate Interim Alternative Educational Setting to enable the child to continue to progress in the general curriculum if the removal is:
- 1) for drugs, weapons offenses, or behavior resulting in serious bodily injury, or
 - 2) based on a hearing officer's determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement.

School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement.

The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward meeting the goals in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability and results in a long-term suspension/disciplinary change of placement.

Children Advancing from Grade to Grade

The State of Missouri ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade. The determination that such a child is eligible for services must be made on an individual basis by the group of individuals within the child's local education agency that is responsible for making those determinations.

Exceptions to FAPE

Public agencies in Missouri are not required to provide FAPE to the following children and youth:

- A. youth with disabilities who reach the age of 21;
- B. students who have graduated from high school with a regular high school diploma. However, students who have graduated, but have not been awarded a regular diploma continue to be eligible in Missouri to receive FAPE if they are under 21 years of age. Students who have obtained a General Education Diploma (GED), but not a regular high school diploma, continue to be eligible. Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 34 CFR 300.503;
- C. children whose parent has refused to consent to the receipt of special education and related services or has failed to respond to a request to provide such consent; or,
- D. parentally placed private school children with disabilities when a board of education has specified a standard less than FAPE.

Agency Responsible for FAPE

The local school district or special school district in which a child with a disability resides is responsible for implementation of FAPE. Students with disabilities or severe disabilities who are admitted to programs and facilities of the Department of Mental

Health or whose domicile is in one district, but actually reside in another district as a result of a placement arranged by or approved by the Department of Mental Health, the Department of Social Services, or a court of competent jurisdiction shall be provided special education and related services in the district where the student actually resides.

The Department of Mental Health, the Department of Social Services, or a court of competent jurisdiction may provide or procure special education and related services for such students.

The Department of Mental Health shall provide special education and related services for students with disabilities, ages three (3) through twenty (20), whose domicile is in one school district, but actually reside in another school district if said student has been determined by the Department of Mental Health to be dangerous to himself/herself or others, or is determined to be medically fragile.

The Department of Corrections shall provide special education and related services to those youth who are determined eligible for special education services at the time of their admittance to the Correctional system.

The following requirements do not apply to those students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

- A. the requirement to participate in State and district assessments;
- B. the requirement relating to transition planning and transition services if their eligibility for Part B services will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

The IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the Department of Corrections has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements relating to LRE do not apply.

The Department of Social Services, Division of Youth Services, shall provide special education and related services or arrange for such services with other agencies and schools where DYS releases such students, for students and youth with disabilities who have been assigned to programs by a court and meet eligibility.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO FAPE:

<i>(Section 162.670, RSMo)</i>	<i>(Section 162.675(3), RSMo)</i>
<i>(Section 162.680(1)(2), RSMo)</i>	<i>(Section 217.355(4), RSMo)</i>
<i>(Section 162.700(1), RSMo)</i>	<i>(Section 219.021, RSMo)</i>
<i>(Section 162.725(1), RSMo)</i>	<i>(Article IV, Section 37(a), Missouri Constitution)</i>
<i>(Section 162.675(2), RSMo)</i>	

2. INDIVIDUALIZED EDUCATION PROGRAMS

Responsibility of SEA and Other Public Agencies for IEPs (34 CFR 300.341)

The Missouri Department of Elementary and Secondary Education (DESE) ensures that each public agency develops and implements an Individualized Education Program (IEP) for each child with a disability served by that agency with the exception of private school children as outlined in Regulation VIII., of this State Plan, and develops and implements an IEP for each eligible child who is placed in or referred to a private school or facility by a public agency.

When IEPs Must be in Effect (34 CFR 300.342)

At the beginning of the school year, each public agency shall have an IEP in effect for each child with a disability within its jurisdiction who has been determined eligible to receive services under IDEA, Part B.

Each public agency shall ensure that an IEP is in effect before special education and related services are provided to an eligible child and that the IEP is implemented as soon as possible following the IEP meeting. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. Each teacher and provider are informed of his or her specific responsibilities related to implementing the child's IEP, and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

IEP Meetings (34 CFR 300.343)

Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability.

Consolidation of IEP Team Meetings

To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

Initial IEPs and Provision of Services

Each public agency shall ensure that within 60 days following the agency's receipt of parent consent to an initial evaluation of a child, the child is evaluated. If determined eligible, special education and related services are made available to the child in accordance with an IEP. A meeting to develop an IEP for the child must be conducted within thirty (30) days of a determination that the child is eligible for services under IDEA.

Review and Revision of IEPs

Each public agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The IEP team must also review and, as appropriate, revise the IEP to address:

- A. any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- B. the results of any reevaluation;
- C. information about the child provided to, or by, the parents;
- D. the child's anticipated needs; or,
- E. other matters.

Amending or Modifying an IEP without a Meeting

In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP. Changes to the IEP may be made by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

IEP Team (34 CFR 300.344)

Public agencies shall ensure that the IEP team for each child with a disability includes:

- A. the parents of the child;
- B. at least one regular education teacher who is or may be responsible for implementing a portion of the IEP of the child (if the child is, or may be, participating in the regular education environment);
- C. at least one special education teacher of the child, or if appropriate, at least one special education provider of the child;
- D. a representative of the public agency who is qualified to provide or supervise the provisions of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the public agency and able to commit the resources of the agency;
- E. an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in B through F of this paragraph;
- F. at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team; and,
- G. whenever appropriate, the child with a disability.

A public agency may designate another public agency member of the IEP team to also serve as the agency representative (IEP team participant D above) if they satisfy the criteria specified for that role.

IEP Team Attendance

A member of the IEP team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. A

member of the IEP team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and the local educational agency consent to the excusal, and the member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting. A parent's agreement and consent shall be in writing.

Requirement for Regular Education Teacher

The regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the child and supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child, consistent with content of IEP (34 CFR 300.347) letter C.

Transition Services Participants

The public agency shall invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be the consideration of the student's transition services needs under 34 CFR 300.347(b)(1), the needed transition services for the student under 34 CFR 300.347(b)(2), or both. If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered. The public agency also shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

Parent Participation (34 CFR 300.345)

Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place.

Information Provided to Parents

The notice to parents must indicate the purpose, time and location of the meeting, and who will be in attendance, and inform the parent that the parent and the district can invite individuals to the meeting that they believe have knowledge or special expertise regarding their child. The determination as to whether an individual has knowledge or special expertise is made by the parent or public agency who invited the individual to be a member of the IEP team.

For a student with a disability beginning not later than the first IEP to be in effect when the child is 16, and annually thereafter, the notice must indicate that a purpose of the meeting is the consideration of needed transition services for the student,

indicate that the agency will invite the student, and identify any other agency that will be invited to send a representative.

Other Measures to Ensure Parent Participation

If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

Conducting an IEP Meeting without a Parent in Attendance

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of at least two (2) attempts to arrange a mutually agreed on time and place, such as:

- A. detailed records of telephone calls made or attempted and the results of those calls;
- B. copies of correspondence sent to the parents and any responses received; or,
- C. detailed records of visits made to the parent's home or place of employment and the results of those visits.

The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

Parent Copy of the IEP

The public agency shall provide the parent a copy of the child's IEP at no cost to the parent.

Development, Review, and Revision of IEP and Special Considerations (34 CFR 300.346)

In developing each child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and as appropriate, the results of the child's performance on any general State or district-wide assessment programs. In conducting a meeting to review and, if appropriate, revise a child's IEP, the IEP team shall consider all factors described below.

- A. in the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- B. in the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- C. in the case of a child who is blind or visually impaired, provide for instruction in Braille reading and writing and the use of Braille unless the IEP team determines, after a functional vision evaluation and an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child. No child will be denied Braille instruction solely because the child has some vision remaining. The instruction in Braille shall be sufficient to enable the child to communicate effectively and efficiently at a level commensurate with his sighted peers of comparable grade level and intellectual functioning;

- D. consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and,
- E. consider whether the child requires assistive technology devices and services.

Content of IEP (34 CFR 300.347)

The IEP for each child with a disability must include:

- A. a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities, and for children with disabilities who take alternative assessments aligned to alternative achievement standards, a description of benchmarks or short-term objectives;
- B. a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities, and meeting each of the child's other educational needs that result from the child's disability;
- C. a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph. This statement must specify whether the student needs transportation as a related service. If the IEP team determines transportation is not necessary as a related service, the IEP document must reflect this;
- D. a statement of the child's participation in physical education;
- E. an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in letter C above;
- F. a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments. If the IEP team determines that the child shall take an alternative assessment on a particular State or district-wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and how the particular alternate assessment is appropriate for the child;
- G. the projected date for the beginning of the services and modifications described in letter C above, and the anticipated frequency, location, and duration of those services and modifications;
- H. a statement of how the child's progress toward the annual goals described in Letter B above will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of

- quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- I. a listing of the individuals who attended the IEP meeting and their role (indicates attendance only, not necessarily agreement with the IEP);
 - J. a statement indicating the child's eligibility or ineligibility for extended school year services;
 - K. a statement of the placement considerations and decision.

As appropriate, the IEP must include:

- A. beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; the transition services (including courses of study) needed to assist the child in reaching those goals; and
- B. beginning not later than one year before the student reaches age 18, a statement that the child has been informed of his or her rights under Part B of IDEA and that those rights will transfer to the student upon reaching the age of majority.
- C. a statement regarding a particular device or service (including an intervention, accommodation or other program modification in order for a child to receive FAPE as determined by the IEP team when considering the special factors identified in 34 CFR 300.346.
- D. for children who are blind or visually impaired:
 - 1) the specific goals and objectives which specify the competencies in reading and writing Braille to be taught during the school year;
 - 2) means by which Braille will be implemented through integration with normal classroom activities;
 - 3) the date on which Braille instruction will commence;
 - 4) the level of competency in Braille reading and writing expected to be achieved by the end of the period covered in the IEP;
 - 5) the duration of each session;
 - 6) if the IEP team determines that Braille instruction is not appropriate for a child with blindness or visual impairments, the basis for that determination shall be documented on the IEP; and,
 - 7) that a referral to Rehabilitation Services for the Blind has been discussed and the decision of the parent regarding the referral.
- E. for children for whom a Behavior Intervention Plan is developed, the Plan must be included in the IEP.
- F. for children who use hearing aids, a statement that the aids will be:
 - 1) monitored for proper working order on a daily basis and during evaluation procedures; and,
 - 2) evaluated for proper functioning on an annual basis.

Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in this section; and the IEP team to include information under one component of a child's IEP that is already contained under another component of such IEP.

Agency Responsibilities for Transition Services (34 CFR 300.348)

If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

Nothing relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Private School Placements by Public Agencies (34 CFR 300.349)

Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child. The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency. If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

IEP Accountability (34 CFR 300.350)

Each public agency must provide special education and related services to a child with a disability in accordance with the child's IEP, and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

Part B of IDEA does not require that any agency, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the Act does not prohibit a State or public agency from establishing its own accountability systems regarding teacher, school, or agency performance. Nothing in this section limits a parent's right to ask for revisions of the child's IEP or to invoke due process procedures if the parent feels that good faith efforts are not being made to assist the child to achieve the goals, benchmarks, or objectives.

3. LEAST RESTRICTIVE ENVIRONMENT (LRE)

General LRE Requirements (34 CFR 300.550)

Each public agency shall ensure that to the maximum extent appropriate children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have disabilities, and that special classes, separate schooling, or other removal of children from the general educational

environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Continuum of Alternative Placements (34 CFR 300.551)

Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children ages 5 to 21 with disabilities for special education and related services. The continuum shall include instruction in the regular classes (general education environments), special classes, special schools, home instruction, and instruction in hospitals and institutions. Each public agency must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general class placement.

For children ages 3-5, the placement options include individual, early childhood settings, early childhood special education classes in settings with nondisabled children, early childhood special education in settings with only disabled children, multiple settings and residential settings.

Placements (34 CFR 300.552)

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that the placement decision is made by the IEP team that is knowledgeable about the child, the meaning of the evaluation data, and the placement options, and is made in conformity with LRE provisions. The child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home.

Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Each year the public agency, through the IEP process, shall review/revise a child's IEP and subsequently make a placement decision for each student with a disability served by the public agency. The public agency must reach the placement decision from the assumption that a student with a disability should be educated with peers who do not have a disability unless the needs of the student with a disability require other arrangements. The public agency must be able to justify the placement decision in accordance with a two-part inquiry:

- A. Whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; if not, then,
- B. Whether the child has been integrated to the maximum extent appropriate.

The following factors shall be considered as a part of the two-part inquiry:

- A. The curriculum and goals of the regular education class (i.e., factors which document a need for specially designed materials, supplies or equipment or significant modifications to the regular curriculum which would have an adverse affect on the educational program for other students in the class);

- B. The sufficiency of the district's efforts to accommodate the child with a disability in the regular class (i.e., description of modifications which have been attempted/resources which have been committed and the student centered results which were observed or a description of the modifications considered but rejected and the basis for the rejection);
- C. The degree to which the child with a disability will receive educational benefit from regular education (i.e., consideration of the potential positive effects with respect to cognitive, academic, physical, social or other areas of development);
- D. The effect the presence of a child with a disability may have on the regular classroom environment and on the education that the other students are receiving (i.e., description of potential harmful effects for the student with a disability or disruptive effects for students without disabilities); and,
- E. The nature and severity of the child's disability (i.e., factors which support a need for alternative instruction which cannot be achieved in the regular class such as extreme distractibility, diverse learning styles, inability to engage appropriately with other students in academic or social interactions).

Nonacademic Settings (34 CFR 300.553)

Each public agency shall ensure that each child with a disability participates in nonacademic and extracurricular services and activities of the public agency with students who do not have disabilities to the maximum extent appropriate to the needs of that child. Such services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to agencies which provide assistance to individuals with disabilities, employment of students including both employment by the public agency, and assistance in making outside employment available.

Children in Public or Private Institutions (34 CFR 300.554)

The local school district is responsible for the provision of special education and related services for a child with a disability who resides in public and private institutions or other alternative residential settings. Children with disabilities or suspected disabilities shall be referred to the public school by a representative of the facility or by the parent for evaluation, development of an IEP, and placement. The residential placement of such children will have been made by the Missouri departments of Mental Health or Social Services or by a court of competent jurisdiction. The placing agency may also provide the special education and related services required by such children with disabilities. When they do provide such services, the services will be under the general supervision of the Department of Elementary and Secondary Education. The Department of Mental Health shall provide special education and related services for any child who is placed outside of his/her official domicile and is determined to be dangerous to himself or others or is medically fragile. Special education and related services for children who reside in public and private institutions shall be provided in the least restrictive environment.

Instate Transfers

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local

educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP.

Students with Known Disabilities

Students with disabilities who enroll and have a copy of a current evaluation and IEP shall be placed, without delay, in the appropriate special education placement if the receiving public agency agrees with the current evaluation and determines that the current IEP is appropriate and can be implemented as written.

- A. If the public agency does not agree with the current evaluation report, it must initiate a reevaluation as described in Regulation III.3. of this State Plan. During the time that the reevaluation is being conducted, the agency shall implement the IEP, as written, from the sending agency; or,
- B. Develop an interim IEP until the reevaluation is complete.

Students with Suspected Disabilities

When a student suspected of having a disability enrolls in a public agency but does not have copies of the evaluation report and/or IEP, the public agency shall seek information to determine the need for special education. Agency officials shall conduct interviews with officials of the public agency in which the student was enrolled, the student's parent/legal guardian, and, when appropriate, the student.

If such interviews fail to produce sufficient information to justify the placement of the student in special education, the public agency shall place the student in regular education, monitor the student's progress, and refer the student for comprehensive evaluation if the student's performance indicates the need for comprehensive evaluation.

If the results of the interviews produce sufficient information to reasonably suspect that the student requires special education services, the public agency shall develop an interim IEP and offer an appropriate special education placement according to the following procedures:

- A. the IEP team shall review all available assessment data pertaining to the student obtained from interviews with the previous agency officials, parent/legal guardian, and student;
- B. the IEP team shall develop an interim IEP based upon the assessment data and consistent with the requirements of Regulation IV.2.;
- C. the IEP team shall offer an interim placement; and,
- D. review and, if appropriate, revise the Interim IEP upon receipt of the evaluation report from the former public agency; or
- E. initiate a reevaluation as outlined in Regulation III.3. of this State Plan if an evaluation report is not received from the former agency within 30 days of the student's enrollment in the public agency or if the evaluation report is received, but not accepted.

Out of State Transfers

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the new school shall provide such child with a free appropriate public

education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the new school conducts an evaluation, if determined to be necessary by the school, and develops a new IEP, if appropriate.

When a student from another State enrolls in a Missouri school district with a copy of a current evaluation report and/or IEP or upon receipt of such records from the out-of-state agency, the following procedures will apply:

- A. the receiving school district in Missouri shall review the information contained in the evaluation report to determine if the student meets eligibility criteria outlined in this State Plan; and,
- B. provide prior written notice to the parent(s) of the child indicating the acceptance or rejection of the evaluation report from the out-of-state agency.

If the district accepts the evaluation report from the previous state and a current IEP was received:

- A. The public agency must review and accept or reject the IEP from the previous state. In accepting the IEP, the public agency must document the parent's satisfaction with the IEP; or,
- B. If the public agency rejects the IEP, an IEP meeting must be held as soon as possible, but not more than thirty (30) calendar days after the Notice to accept the evaluation report was provided.

If the public agency accepts the evaluation report from the previous state but the agency did not receive a copy of the current IEP:

- A. the agency must conduct a meeting to develop an IEP as soon as possible, but not more than thirty (30) calendar days after the Notice to accept the evaluation report was provided.

If the agency rejects the evaluation report from the previous state, the agency must:

- A. Conduct an evaluation of the child with the intent to determine if the child meets Missouri eligibility criteria and if the child continues to need special education and related services.
- B. During the evaluation period, if an IEP was received from the previous state and the parents indicate their agreement, the district must:
 - 1) implement the IEP from the previous state, as written; or,
 - 2) develop an interim IEP for the period of the evaluation.
- C. If an IEP is not received from the previous state, or if agreement with the parents cannot be reached for an interim IEP and placement, the child will be placed in regular education for the period of the evaluation.

- D. Based on the results of the evaluation and eligibility determination, hold a meeting to develop/review/revise the IEP within thirty (30) calendar days of the eligibility staffing date or provide Notice to the parent of the child's ineligibility and lack of need for special education and related services.

Transmittal of Records

To facilitate the transition for a child entering a school from another school district in Missouri or from an out-of-state school, the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled and the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

Technical Assistance and Training Activities (34 CFR 300.555)

The Department of Elementary and Secondary Education will conduct the following activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the least restrictive environment policy and are provided with technical assistance and training necessary to assist them in this effort:

- A. distribution of state and federal laws and regulations pertaining to special education;
- B. monitoring of public agencies to determine compliance with the least restrictive environment provisions;
- C. training/workshops for public agency personnel provided prior to and following monitoring activities regarding least restrictive environment provisions;
- D. technical assistance as may be requested by public agencies and local school districts relative to the implementation of LRE provisions; and,
- E. collaboration with the State Parent Information and Training Center as requested.

Monitoring Activities (34 CFR 300.556)

The Department of Elementary and Secondary Education monitors each public agency, including the requirements for the least restrictive environment, through a comprehensive program review.

These procedures include:

- A. an annual review of each school district's count of children with disabilities and placement data;
- B. investigation of any child complaint filed;
- C. periodic monitoring of public agencies to determine appropriate implementation of policies and procedures; and,
- D. review, approval, and subsequent verification of any corrective actions required of a public agency with respect to violations of least restrictive environment requirements.

The DESE will analyze monitoring data collected relative to implementation of the LRE requirement at each LEA/public agency. If there is evidence that the LEA/public agency makes placements that are inconsistent with 34 CFR 300.550, the DESE:

- A. shall review the LEA/public agency's justification for its actions; and,
- B. shall assist in planning and implementing any necessary corrective action.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY FOR THE LEAST RESTRICTIVE ENVIRONMENT:

(Section 162.680(1)(2), RSMo)
(Section 162.970, RSMo)

Special Education Placements

Early Childhood Placement Options

Early Childhood Setting

Children with disabilities who receive all of their special education and related services in educational programs designed primarily for children without disabilities. No education or related services are provided in separate special education settings.

Early Childhood Special Education Setting

Children with disabilities who receive all of their special education and related services in educational programs designed primarily for children with disabilities housed in regular school buildings or other community-based settings. No education or related services as designated by an IEP are provided in early childhood settings.

Home

Children with disabilities who receive all of their special education and related services in the principal residence of the child's family or caregivers.

Part Time EC/ Part time ECSE Setting

Children with disabilities who receive all of their special education and related services in multiple settings, such that: (1) general and/or special education and related services are provided at home or in educational programs designed primarily for children without disabilities, AND (2) special education and related services are provided in programs designed primarily for children with disabilities.

Residential Facility

Children with disabilities who receive all of their special education and related services in publicly or privately operated residential schools or residential medical facilities on an inpatient basis.

Separate School

Children with disabilities who receive all of their special education and related services in educational programs in public or private day schools specifically for children with disabilities.

Itinerant Service Outside the Home

Children with disabilities who receive all of their special education and related services at a school, hospital facility on an outpatient basis, or other location for a short period of time (i.e., no more than 3 hours per week). (This does not include children receiving services at home.) These services may be provided individually or to a small group of children.

Kindergarten - Grade 12 Placement Continuum

Outside Regular Class

Less Than 21 percent of day

Children with disabilities who receive special education and related services outside the regular classroom for less than 21 percent of the school day.

Outside Regular Class

At least 21 percent / No more than 60 percent

Children with disabilities who receive all of their special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day.

Outside Regular Class

More than 60 percent of day

Children with disabilities who receive all of their special education and related services outside the regular classroom for more than 60 percent of the school day. This category does not include children who received education programs in public or private separate day or residential facilities.

Public Separate (Day) Facility

Children with disabilities who receive all of their special education and related services for greater than 50 percent of the school day in public separate facilities.

Private Separate (Day) Facility

Children with disabilities who receive all of their special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities.

Public Residential Facility

Children with disabilities who receive all of their special education and related services for greater than 50 percent of the school day in public residential facilities.

Private Residential Facility

Children with disabilities who receive all of their special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities.

Homebound/Hospital

Children with disabilities who receive all of their special education and related services in hospital programs or homebound programs.

4. TRANSITION OF CHILDREN FROM PART C SERVICES TO PART B SERVICES

The State of Missouri has developed the following policies and procedures to ensure a smooth and effective transition from Part C (First Steps) services to Part B (local school district) services for children with disabilities at age three.

Six months prior to the child's third birth date, the Part C service coordinator will convene an IFSP meeting to discuss the transition process with the parents and other team members in order to develop a transition plan. At this time, the team documents the steps to be taken to provide the child with a smooth and effective transition to the public school and/or other services as appropriate. If the parent agrees, local education agency (LEA) personnel must be invited and attend this IFSP meeting. If a member of the LEA staff was invited, but did not attend the transition meeting, the LEA must contact the parent at least 120 days prior to the child's third birth date. The purpose of the contact is to explain the process the district will complete to determine the child's eligibility for services under Part B of the IDEA and, if eligible, the steps that will be necessary to assure the provision of services on the child's third birth date unless the birth date occurs during a routine school break.

If the parent wants an eligibility determination for special education and related services under Part B of IDEA, the Part C service coordinator shall release information to the LEA. Any information that will assist the LEA in determining the child's eligibility and special education and related service needs must be released and must be done in such a manner so as to ensure a timely receipt by the LEA. Information provided must include, at a minimum, the following:

- A. child and parent name, address, and phone number, and the child's birth date;
- B. current copy of the entire IFSP which includes present levels of functioning, early intervention services, and transition plan;
- C. all evaluations that have occurred in the previous year, and if not contained in the child's record, where the information can be obtained; and,
- D. any written reports from service providers within the last year.

Upon receipt of the information, the LEA must follow initial evaluation procedures as outlined in the Part B State Plan. LEAs are required to provide special education and related services to eligible children as identified in the IEP as of the child's third birth date unless the birth date occurs during a normal vacation period for the public school. The LEA can document that it has made a diligent effort to complete the evaluation and IEP process, but despite that effort, was unable to do so within time lines. IEPs developed in the spring or summer may identify the implementation date as the first day of school in the fall.

Part B eligible children whose third birth dates are May through August may continue in the First Steps program until the initiation of their local district's school year in the fall.

Eligible children whose third birth dates are April 1 through May 1 may either transition to Part B services before the end of the current school year or continue services in First Steps until the initiation of their local district's school year in August/September. This discussion is part of the transition conference. Children who enroll in the local school district for the remainder of the school year must be considered for Extended School Year as required by Part B of the Individuals with Disabilities Education Act.

Financial support for early intervention services that are provided after the child's summer third birth date are as follows:

Early intervention services that were financially supported prior to the child's third birth date by Part C funds will be paid by the Department of Elementary and Secondary Education (DESE) after the child's third birth date.

If LEA policy allows, eligible children whose third birth dates occur during September may receive services under Part B at the beginning of the district's school year.

V. PROCEDURAL SAFEGUARDS/DISCIPLINE

The following statements reflect the policy which the Missouri Department of Elementary and Secondary Education has established to ensure procedural safeguards for all parties involved in the education of students with disabilities (Sections 162.945, 162.950(1)(2), 162.955, 162.961(1)(2)(3)(4)(5), 162.962(1)(2), 162.963(1)(2), 162.997(1)(2), 162.998(1)(2), and 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo).

1. OPPORTUNITY TO EXAMINE EDUCATION RECORDS/PARENT PARTICIPATION IN MEETINGS

The local school district and/or responsible public agency shall provide the parent/guardian with the opportunity to examine all education records regarding the student with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

The local school district and/or responsible public agency shall provide proper notification to ensure parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

A meeting does not include informal or unscheduled conversations involving staff and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The local school district and/or responsible public agency shall ensure parents are members of any group that makes decisions on the educational placement of their child. Procedures for notification are the same as that for notification of IEP meetings.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local school district or responsible public agency shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the local school district or responsible public agency is unable to obtain the parents' participation in the decision. In this case the local district or responsible public agency must have a record of its attempt to ensure their involvement. The local school district or responsible public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

2. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

The parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of the student. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by the local school district or responsible public agency when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

The right to an independent educational evaluation assures:

- A. that upon requesting an IEE, information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations will be given to parents.
- B. that parents have the right to an independent evaluation at public expense for any agency evaluation, or any component of that evaluation, with which the parents disagree. However, the local school district or responsible public agency may initiate a hearing as described in Regulation V.6. to show that the evaluation is appropriate or that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.
 - 1) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.
- C. that parents cannot be required to notify the local school district or responsible public agency prior to obtaining an independent evaluation at public expense. However, it is reasonable for the district to request notification before such an evaluation is conducted. Likewise a parent cannot be required to explain why they object to the public evaluation, but it is reasonable for the district to ask why.
- D. that if the local school district or responsible public agency has a policy regarding reimbursement for independent evaluations, that policy will specify the factors to be considered in the determination of public funding for the evaluation. That determination should be based on:
 - 1) the qualifications and locations of the evaluators; and,
 - 2) the cost of the evaluation.

The public agency may only impose limitations on the cost of an IEE if the agency uses those same limitations when conducting an evaluation. If a public agency uses such cost limitations, it must ensure that its procedures require payment for an IEE at a higher rate if an appropriate IEE cannot, in light of the child's unique needs and other unique circumstances, be obtained within those cost limitations. If the cost of an IEE at public expense exceeds the agency's cost limitations, the public agency must either: (a) initiate a due process hearing or (b) pay the full cost of the IEE.

- E. that if the local school district or responsible agency has a policy regarding reimbursement for independent evaluations and that policy establishes allowable maximum charges for specific tests or types of evaluations, the maximum set will still enable parents to choose from among qualified professionals in the area and will result only in the elimination of excessive fees. The policy shall specify that the local school district or responsible agency will pay the fee for the independent evaluation up to the maximum established. Additionally, the policy will anticipate that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria.
- F. that if the local school district or responsible agency has no policy which sets maximum allowable charges for specific tests or types of evaluation, then the parents will be reimbursed for services rendered by a qualified evaluator.
- G. except for the location of the evaluation and the qualifications of the examiner, a local school district or public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. These criteria for IEEs at public expense must apply equally to the local school district's or public

- agency's own evaluations and exceptions for unique circumstances must be considered.
- H. that the results of an independent evaluation obtained by the parents at private expense:
- 1) will be considered by the local school district or responsible public agency in any decision made with respect to the provisions of a free appropriate public education to the student; and,
 - 2) may be presented as evidence at a hearing under this subpart regarding that student.
- I. that the cost of an independent evaluation will be at public expense if a hearing officer requests an independent educational evaluation as part of a hearing.

3. WRITTEN NOTICE

Written notice must be given to parents a reasonable time before the local school district or responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. If the notice relates to an action proposed that also requires parent consent, the agency may give notice at the same time it requests parent consent. The notice must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parents is not a written language, the district shall ensure the following:

- A. that the notice is translated orally or by other means to the parents in their native language or other mode of communication;
- B. that the parents understand the content of the notice; and,
- C. that there is written evidence that those requirements have been met.

Content of Notice

The written notice sent to parents by the local school district or responsible public agency must contain the following:

- A. a description of the action proposed or refused by the agency;
- B. an explanation of why the agency proposes or refuses to take the action;
- C. a description of any options the agency considered and the reasons for rejection of the options not selected;
- D. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;
- E. a description of any other factors which are relevant to the agency's proposed or refused action;
- F. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained; and,
- G. sources for parents to contact to obtain assistance in understanding their procedural safeguards.

4. PROCEDURAL SAFEGUARDS STATEMENT

A copy of the procedural safeguards statement available to the parents of a child with a disability shall be given to parents only one (1) time a year, except that a copy also shall be given to the parents:

- A. upon initial referral or parental request for evaluation;
- B. upon the first occurrence of the filing of a due process complaint;
- C. upon request by the parent; and,
- D. upon disciplinary removal(s) as required by the IDEA.

The procedural safeguards statement must include a full explanation of all of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present complaints to initiate due process hearings; the child's placement during dependency of due process proceedings; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of children in private schools at public expense; mediation; due process hearings; including requirements for disclosure of evaluation results and recommendations; civil actions; attorneys' fees; and the State complaint procedures which includes a description of how to file a complaint and the timelines under those procedures.

5. WRITTEN CONSENT

Written, informed, consent of the parent must be obtained by the local school district or responsible public agency from a parent prior to:

- A. commencing the initial evaluation, if additional testing is needed, or any additional testing as part of the reevaluation process; or,
- B. initial provision of special education or related services to a student with a disability.

Consent for initial evaluation may not be construed as consent for initial placement. Parent consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Written consent is not necessary for any subsequent placements and consent for reevaluations need not be obtained if the school district can demonstrate that it had taken reasonable measures to obtain consent and the parent failed to respond. "Reasonable measures" include a minimum of two (2) attempts documented, such as: detailed records of telephone calls made and the results of those calls; copies of correspondence sent to the parent and responses received; detailed records of visits to the parent's home or work place and the results of those visits. Neither may lack of consent after the initial evaluation or the initial placement be a cause for denial of any other service, activity, or benefit of the local school district.

Parent consent means that the:

- A. parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;
- B. parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and,

- C. parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; however, if the parent revokes consent, that revocation is not retroactive.

Evaluation means that procedures are used to determine whether a student is disabled and provide information for use by the IEP team to determine the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class unless, before administration of that test or evaluation, consent is required of parents of all children. If a parent refuses consent for initial evaluation or reevaluation, the local school district or responsible public agency may continue to pursue those evaluations by using the due process hearing procedures. These procedures, which include mediation, are explained in Regulation V.6., Administrative Hearing Rights which follows in this section.

Personally identifiable means that records include:

- A. the name of the student, the student's parents, or other family member;
- B. the address of the student;
- C. a personal identifier, such as the student's social security number or student number; or,
- D. a list of personal characteristics or other information which would make it possible to identify the student with reasonable certainty.

6. ADMINISTRATIVE HEARING RIGHTS

Parents or a public agency may initiate due process concerning the proposed action of the agency to initiate or refuse to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. These rights shall be assured through the procedures outlined for resolution conferences and state-level hearing panels.

Resolution Conference

The resolution conference is conducted by the chief administrative officer of the school district or a designee pursuant to Section 162.950, RSMo.

- A. Process: The resolution conference is informal. Witnesses are not sworn, and a written record is not maintained. The parents or guardian have the right to examine all educational records prior to the review. Both the school staff and the parents or guardian have the right to call witnesses, question witnesses, and present any written or oral information which pertains to the action.
- B. Timelines: The resolution conference must be held and the decision issued within ten (10) days from the date of the request. The time line may be extended by mutual agreement of the parties.
- C. Either a responsible public agency or a parent can waive the right to a resolution conference and request a state-level hearing panel (three member hearing panel). A request for state-level hearing by either a parent or a public agency shall be treated as a waiver of a resolution conference and processed. A parent may not be forced to proceed to a resolution conference in lieu of a due process hearing where the agency and not the parent initiates a resolution conference.

State-level Hearing Panel

Appeal of the resolution conference decision is to the state board of education pursuant to Section 162.961, RSMo. A request for a due process hearing shall include the child's name, address, school, issue, and suggested resolution of dispute, if known.

- A. Process: Except as provided below in expedited hearings under §162.961.6, RSMo, a panel of three individuals is empowered, one member designated by the school, one member designated by the parents or guardian, and the chair selected by the State Department of Elementary and Secondary Education. The chair is a licensed attorney. If either party has not successfully chosen a willing and available panel member with ten (10) days after the Department of Elementary and Secondary Education receives the request for a due process hearing, the panel member(s) will be chosen instead by the Department. Each member must be determined to be impartial and be knowledgeable of students with disabilities.
- B. Hearing Rights: Any party to a hearing has the right to:
 - 1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
 - 2) present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - 3) prohibit the introduction of any evidence, including all evaluations and recommendations based on the offering party's evaluation at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
 - 4) obtain a written or, at the option of the parents electronic verbatim record of the hearing at no cost; and,
 - 5) obtain written or, at the option of the parents, electronic findings of fact and decisions at no cost;

In addition, the parents have the right to open the hearing to the public; otherwise, it is closed. The parents may also elect to have the student present at the hearing.

A copy of the written findings and decision shall be mailed to each party and to the State Department of Elementary and Secondary Education (DESE). The DESE shall provide a copy of the findings and decision, with all personal identifiers removed, to the Missouri Special Education Advisory Panel and shall make the findings and decision available to the public (with all personally identifiable information deleted).

- C. Timelines: Except in the case of an expedited hearing provided for below, the hearing panel must be empowered within fifteen (15) days of the date of the appeal of the resolution conference decision or the request for a three member hearing panel if the parents waive their right to a resolution conference. The hearing panel must conduct the hearing, render and mail a written decision within 45 days of the date of the request for due process. The decision timeline may be extended upon request of the party/parties and agreement by the hearing panel chair.

Site of the Hearing

Each hearing must be conducted at a time and place which is reasonably convenient to the parents and student involved.

Legal Services

The parent/guardian will be informed of any free or low-cost legal and other relevant services available in the area if:

- A. the parent requests the information; or,
- B. the parent or the agency initiates an impartial due process hearing.

Hearing Officers

Hearing officers shall not have a personal or professional interest in the matters that are before them which would conflict with their objectivity in the hearing. Hearing officers shall have an affirmative obligation to seek out any conflict of interest and withdraw from any matter in which a conflict is identified. Hearing officers must be Missouri residents or demonstrate employment in Missouri.

- A. A hearing shall not be held by an employee of a public agency which is involved in the education or care of the student or an employee of the State Board of Education.
- B. Specific allegations of conflict of interest shall be filed with the Department of Elementary and Secondary Education, Division of Special Education, and investigated under the Child Complaint Process, Regulation VI.2.
- C. A person who otherwise qualifies to conduct a hearing is not an employee of the agency because he or she is paid by the agency to serve as a hearing officer.

Hearing Officer Lists

The Department shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualification of each of those persons. Attorneys on contract to serve as chairs will be on a separate list. Others who serve as hearing panel members will be placed on the list if they meet training and assessment requirements of the Department, agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.

Training and Assessment Requirements for Hearing Officers

Hearing officers who do not serve in the role of chair must meet the following training requirements:

- A. attend a minimum of one out of every two trainings conducted by the Department of Elementary and Secondary Education. Trainings will be held approximately every 18 months. Failure to meet this requirement will result in the removal from the hearing officer list. Attendance at a future training session will be necessary to be placed back on the list; and,
- B. in extraordinary circumstances, the department has the discretion to waive this requirement. Waiver requests must be in writing with supporting documentation. Denial of a waiver is not appealable.

Mediation

Upon receipt of a request for due process hearing the parties will be offered the opportunity to mediate their dispute. Both parties must agree to mediation unless federal law provides to the contrary, and mediation will be provided at no cost to either party.

A. Process

The parties must mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Special Education Division.

- 1) Mediation must be scheduled within fifteen days of the selection of a mediator.
- 2) Mediation must be conducted at a time and place mutually agreed upon by the parties.
- 3) Mediation must be completed within thirty days of the agreement to mediate.
- 4) Any agreement reached during mediation must be in writing and delivered to each party.
- 5) No more than three persons can accompany each party unless the parties mutually agree on additional participants.
- 6) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.
- 7) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under Part B of IDEA.
- 8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to commencement of the process.

B. Mediator Qualifications

- 1) Mediators must be impartial and free of any conflict of interest.
- 2) Mediators shall not be employees of an LEA, or a public agency which is involved in the education or care of the student, or of the State Board of Education. A person who otherwise qualifies as a mediator is not an employee of the State Board of Education or LEA solely because he or she is paid by the agency to serve as a mediator.
- 3) Mediators must have a minimum of 16 hours of training as a mediator.
- 4) Mediators, to be placed on the Department's mediator list, must meet the above requirements, and must: agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.
- 5) Mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

C. Mediation in the Absence of a Due Process Request

Parties have the right to seek mediation of their disputes outside of the state mediation process and due process system. However, the Department will only pay for mediation if the parties agree to it in connection with a due process request. Should the parties decide to mediate their disputes in the absence of a due process request, none of the state requirements for mediation apply.

D. Effect on Due Process Hearing Timelines

The process for choosing panel members and scheduling the due process hearing will occur simultaneously with the mediation process. In the event that the due process hearing is scheduled for a date prior to the date of completion of the mediation, one or both of the parties will need to request and obtain an extension of the due process hearing timeline from the Chairperson of the three member panel if the desire is to proceed with the mediation.

Civil Proceedings

Any party aggrieved by the findings and decisions made in a hearing may appeal the decision of the hearing panel to the state courts as provided in Chapter 536, RSMo., or in federal court without regard to the amount in controversy. To the extent that Chapter 536, RSMo. provisions conflict with the IDEA judicial review requirements at 34 CFR 300.512(b) the IDEA judicial review provisions are controlling. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and shall base its decision on the preponderance of the evidence, granting the relief the court deems appropriate.

Maintenance of Placement

During the pendency of any administrative or judicial proceeding pursuant to Section 162.950 and Section 162.960 RSMo, there will be no change in the assignment or status of a student with a disability unless such change has been made with the written consent of the parent or guardian. However, students who are endangering themselves or others can have their status changed, without the written consent of the parent or guardian, pursuant to court order.

In an instance where a student is initially enrolling in school and the parents or the local school district request a hearing on the assignment of the student in a special education program, the student, with consent of the parents, will be placed in the public school program, pending completion of the due process proceedings in accordance with the provisions of Section 162.955, RSMo.

When a school district contacts a State Board of Education operated program for consideration of a student's eligibility for acceptance and enrollment, the district shall assure that the student will be enrolled or will maintain enrollment in the district pending final action by the state.

If the decision of a hearing panel in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the local school district or responsible public agency and the parents for purposes of "stay-put" pending and during judicial appeal.

Attorneys' Fees

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

- A. to a prevailing party who is a parent of a child with a disability;
- B. to a prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- C. to a prevailing state educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under this section. A public agency may use Part B funds for conducting an action or proceeding under this section.

A court award for reasonable attorney's fees is subject to the following:

- A. the award must be based on prevailing rates in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fee award;
- B. attorney fees and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to a parent if: the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative proceeding, at any time more than ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court or hearing officer finds that the relief finally obtained is not more favorable to the parents than the offer of settlement. However, if the parent prevails and was substantially justified in rejecting the settlement offer an award of attorney fees and related costs may be made;
- C. attorney fees may not be awarded related to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action; and,
- D. the court may reduce the amount of attorney fees awarded if: the parent unreasonably protracted the final resolution of the controversy, the amount unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience; the time spent and legal services furnished were excessive considering the nature of the action/proceeding; or, the attorney representing the parent did not provide to the school district the appropriate information in the due process hearing request required by regulation.

NOTE: Attorney fees may not be reduced if the court finds the state or local agency unreasonably protracted the final resolution, or there was a violation of the Procedural Safeguards.

7. SURROGATE PARENTS (EDUCATIONAL SURROGATES)

The Missouri Department of Elementary and Secondary Education has established the following for the appointment of surrogate parents:

Identifying the Need for Appointment

Any person may advise a responsible public agency that a student with a disability within its jurisdiction may be in need of a person to act as a surrogate parent. Notice can be given to the public agency responsible for providing education to students with disabilities or directly to the Division of Special Education.

Process of Appointment

When the public agency responsible for providing education to students with disabilities is informed of a student with disabilities living within its jurisdiction, it shall, within thirty (30) days, determine whether a surrogate parent should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Division of Special Education. The Division, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as a surrogate parent. The Division shall maintain a registry of trained surrogate parents from which they will select individuals for appointment. If a surrogate parent dies, resigns, or is removed, within 15 days thereof, a replacement will be appointed.

Criteria for Appointment

The State Board of Education shall appoint a person to act as a surrogate for the parent or guardian of a student with a disability as defined in Section 162.675, RSMo, when:

- A. the student has no identified parent, guardian, or person acting as parent;
- B. the student has parents who, after reasonable efforts, cannot be located by a public agency; and,
- C. the student is a ward of the state and is living in a facility or group home (and not with a person acting as a parent).

Definitions

The Department will use the following definitions when determining student eligibility to receive a surrogate appointment:

- A. the term "parent" means a natural, adoptive, or foster parent of a child, a guardian, a person acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed. The term does not include the State if the student is a ward of the State; and,
- B. the term "person acting as a parent of a child" refers to relatives of the child or private individuals allowed to act as parents of a child by the child's natural parents or guardians. For example, a grandparent, neighbor, governess, friend, or private individual caring for the child with the explicit or implicit approval of the child's natural parent or guardian would qualify as "a person acting as a parent of a child." If a child is represented by such a person, no surrogate parent is needed.

Qualifications for Appointment

Any person who is appointed to act as a surrogate parent shall:

- A. be at least 18 years of age;
- B. not be an employee of the State Board of Education or any governmental entity having responsibility for the education or care of the student with disabilities (a person otherwise qualified to be a surrogate parent is not an employee of an agency simply because he or she is reimbursed to serve as a surrogate parent) but can be an employee of a nonpublic agency that provides only non-educational care for the child;
- C. be free from any interest that may conflict with the interests of the student represented; and,
- D. have knowledge and skills that ensure adequate representation of the student.

Surrogate Parent Training

All surrogate parents shall participate in a training session in which they will become familiar with the Missouri Surrogate Parent Program, acquire a basic understanding of the special education process in Missouri, and develop the knowledge and skill necessary to adequately represent a student. DESE shall provide the surrogate parent training and may require assistance from the LEA to present an effective training session.

Responsible Public Agency Responsibilities

Specifically, a responsible public agency shall:

- A. designate a staff member who will be responsible for overseeing the surrogate parent program in their district. Unless notified otherwise, DESE will assume that the surrogate parent contact person is the same as the district's special education director or contact person;
- B. complete and return to DESE a "Determination of Need for Surrogate Appointment" form for each student believed to be eligible for receiving a surrogate appointment;
- C. assist DESE in recruiting surrogate parent volunteers and submit their names and addresses to DESE;
- D. be available to aid DESE with local surrogate parent training; and,
- E. complete and return to DESE an "LEA Educational Surrogate Evaluation" form for each surrogate serving in the district.

Duties of the Surrogate Parent

An individual appointed to act as a surrogate parent shall:

- A. complete and return to DESE a Surrogate Parent Application and Verification of Eligibility form;
- B. attend a surrogate parent training session;
- C. represent their assigned student in all decisions relating to the student's education including matters related to the identification, evaluation, and educational placement of the child, as well as the provision of a free appropriate public education to the child; and,
- D. notify the LEA or DESE if any conflicts develop, or if they will no longer be able to fulfill their surrogate parent role.

Immunity from Liability

The person appointed to act as a surrogate parent shall be immune from liability for any civil damage arising from any act or omission in representing the student in any decision related to the student's education.

This immunity shall not apply to intentional conduct, wanton and willful conduct, or gross negligence.

Reimbursement

The person appointed to act as a surrogate parent shall be reimbursed by the State Board of Education for all reasonable and necessary expenses incurred as a result of his or her representation of a student with a disability. Determination of "reasonable and necessary" expenses shall be made at the discretion of the Department and pursuant to State Office of Administration guidelines. Such expenses do not include attorney fees or child care/babysitting expenses.

Evaluation

DESE will send to each LEA an evaluation form to complete for each surrogate parent in which they will recommend the continuation or termination of the surrogate appointment. LEAs shall provide brief written discussions supporting a recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Division will investigate and reach a decision on whether to terminate.

Termination

The surrogate parent appointment shall be terminated at the request of the surrogate parent or in the event of any of the following situations:

- A. the conclusions of the initial educational evaluation indicate that the student does not qualify for receiving special education;
- B. the student's parent or guardian reappears to represent him or her, or wardship is terminated;
- C. the student is no longer in need of special education services;
- D. the student reaches the age of majority;
- E. the surrogate parent fails to fulfill their responsibilities as defined by state and federal regulations; and,
- F. the student graduates and/or reaches age 21.

8. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a student with a disability reaches age 18, the local school district or responsible public agency shall provide any required notice to both the student and the parents. All other rights accorded to parents under Part B of IDEA transfer to the student. All rights accorded to parents transfer to students, at age 18, who are incarcerated in an adult or juvenile, State or local correctional institution. The student and parent must be notified of the transfer of rights. The transfer does not apply if the student is declared incompetent by a court of competent jurisdiction.

9. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS

Ten (10) School Days or Less

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities) without providing services, unless the conduct involves drugs, [or] weapons, or causes serious bodily injury in which case the change may be for 45 school days and would require services in an alternative setting as explained below or the conduct involved is unrelated to the child's disability, in which case the change may involve a long-term suspension or expulsion and would require services in an alternative setting as explained below. A long-term suspension is a suspension in excess of ten (10) school days consecutively, or in excess of ten (10) school days cumulatively in a school year where a pattern of suspension is created. To determine if a pattern is created, three factors are considered: duration of each removal, frequency of each removal, and total amount of time child is removed for that school year.

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except services must be provided to ensure the child receives a free

appropriate public education, although it may be provided in an interim alternative educational setting.

45 Days

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency. On the date on which the decision to take that action is made, the parent must be notified of the decision and provided the Procedural Safeguards statement.

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

Determination that Behavior Was a Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestations of the child's disability, the IEP Team shall conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement for a removal of more than ten days or removal due to weapons, drugs, or serious bodily injury as described above; in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided if removal is due to weapons, drugs, or serious bodily injury, return the child to the placement from which the child was

removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Determination of Setting (CFR 300.522)

The interim alternative educational setting must be determined by the IEP team. Any interim alternative educational setting in which a child is placed must be selected so as to enable the child to continue to progress in the general education curriculum, although in another setting, and to receive, as appropriate, a functional behavioral assessment, behavioral intervention, and services and modifications, that will enable the child to progress toward meeting the goals set out in the IEP and to address the behavior violation so that it does not recur.

Parent Appeal

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a due process hearing.

Dangerous Students (34 CFR 300.521)

- A. If the school district believes the child will injure himself or others, the school district has the right to obtain an expedited due process hearing to seek a 45 day interim alternative educational setting. This procedure may be repeated as necessary. The parent must be notified of the decision to seek this order on the day the decision is made and provided the procedural safeguards statement. In making the determination, the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may return a child with a disability to the placement from which the child was removed; or order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

“Stay-put” Under Disciplinary Actions

When a parent requests a due process hearing regarding the discipline action to challenge the interim alternative educational setting or the manifestation determination and when the child is disciplined for weapons, drugs, behavior causing serious bodily injury to others, or because they are a danger to themselves or others, the child will remain in that interim alternative educational setting pending the hearing decision of the hearing officer or until expiration of the time period of the interim alternative educational setting, whichever comes first (unless the parties agree otherwise). If school personnel maintain that it is dangerous for the student to be in the current placement (the placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the school district may request an expedited

hearing. The State educational agency shall arrange for an expedited hearing, which shall occur within twenty (20) school days of the date the hearing is requested and shall result in a determination within ten (10) school days after the hearing.

Protection for Children Not Yet Eligible for Special Education and Related Services

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if the district did not have prior knowledge of the disability. If the school district is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline. The district has knowledge of the disability when:

- A. the parent has expressed concern in writing that the student needs special education services; or,
- B. the parent has requested an evaluation; or,
- C. the student's teacher or other school staff has expressed concern about the student's behavior or performance directly to the director of special education or to other supervisory personnel in accordance with the agency's established child find or special education referral system.

A school district would not be deemed to have knowledge that the child is a child with a disability, if the school district conducted an evaluation and determined that the child was not a child with a disability, or determined that an evaluation was not necessary and provided proper Notice of Action Refused; or, if the parent of the child has not allowed an evaluation of the child pursuant to the IDEA or has refused services, or if the child has been evaluated and it was determined that the child was not a child with a disability.

If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed (assuming the school district is not deemed to have knowledge that the child is a child with a disability prior to the behavior that precipitated the disciplinary action), the child remains in the educational placement determined by the school district, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the school district shall provide special education and related services and follow all required procedures for disciplining students with disabilities.

Reporting Crimes Committed by Students With Disabilities

Nothing in this part shall be construed to prohibit a school district from reporting crimes, to appropriate law enforcement and judicial authorities, or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by students with disabilities. An agency reporting a crime shall ensure copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. Transmittal of records must be in accordance with Family Educational Rights and Privacy Act (FERPA).

Definitions

- A. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812 (c)).
- B. Illegal drug means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal Law.
- C. Substantial evidence means beyond a preponderance of the evidence.
- D. Weapon means dangerous weapon as defined under paragraph (2) of the first subsection (g) of Section 930 of title 18, United States Code. The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.
- E. A serious bodily injury involves an injury with a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC 1365 (h)(3)).

Expedited Due Process Hearings

An expedited hearing requested in connection with a disciplinary action (involving a disciplinary change of placement) shall be held by a hearing officer appointed by the Department of Elementary and Secondary Education from a list of contract attorneys, within 20 school days of the date the department receives the hearing request. A decision must be rendered within ten school days after the hearing and no extensions of the time-line are permitted. No discovery is permissible in an expedited hearing. All other provisions within the Procedural Safeguards regulations of this State Plan regarding hearing officers and hearings are applicable if not inconsistent with this subsection on expedited due process hearings.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS FOR PROCEDURAL SAFEGUARDS IN THIS STATE:

(Section 162.950(1)(2), RSMo)

(Section 162.955, RSMo)

(Section 162.958, RSMo)

(Section 162.959, RSMo)

(Section 162.961 (1)(2)(3)(4)(5), RSMo)

(Section 162.962 RSMo)

(Section 162.963(1)(2), RSMo)

(Section 162.997(1)(2), RSMo)

(Section 162.998(1)(2), RSMo)

(Section 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo)

VI. DESE RESPONSIBILITIES

1. APPLICATION, EVALUATION, AND APPROVAL OF PRIVATE EDUCATIONAL AGENCIES

Statutory Authority

Pursuant to State law, a responsible public agency may, if no adequate program is available in nearby districts or through public agencies, contract with any organizations within the state which meet the standards established by the State Board of Education for services for students with disabilities. Agencies will be approved and monitored by the Department of Elementary and Secondary Education. Agencies will be monitored by standards equal to or exceeding those used to monitor local school districts in accordance with provisions of Part B of the Individuals with Disabilities Education Act (IDEA) and applicable state standards.

Agency Defined

For the purpose of these provisions, a private organization is defined as any organization which has programs meeting the standards established by the State Board of Education with the exception of any organization established for a sectarian purpose or whose governance is controlled by any religious creed, church, or sectarian denomination.

Agency Policies and Procedures

Agencies shall be organized and operated according to written policies and procedures. Those written policies and procedures must include a Statement of Policy that the agency will:

- A. comply with the provisions of IDEA, including all of the procedural safeguards provided for in that Act;
- B. provide all services to students with disabilities under contract from a public agency in accordance with the student's Individualized Education Program (IEP);
- C. provide all services at no cost to the parents;
- D. ensure that the student has the same rights as a student with a disability served by the public agency with whom the contract is negotiated.
- E. have a written Code of Conduct which has been shared with the parents of the students with a disability and the public agency with which the contract has been negotiated; and,
- F. have a written procedural plan which coordinates the evaluation of all programs and services provided to students with disabilities which includes:
 - 1) program goals and objectives for each program and service; and,
 - 2) evaluation criteria and procedures for each offered program/service.

Special educational services provided by the agency, pursuant to contract with public school(s), shall conform to the aforementioned policies. To document that those services will conform, each agency must sign an "Assurances" statement provided by the Department of Elementary and Secondary Education.

Private agency approval may be withdrawn by the Department of Elementary and Secondary Education if the agency's written policies and procedures, as they relate

to IDEA, are not being followed by the agency and the agency fails to correct the situation in a timely manner.

Administration of Programs

The educational programs provided by agencies shall be provided administrative direction by a person who has certification in an area of special education or related area which is appropriate for the educational program(s) the agency provides.

Provision of Free Appropriate Public Education (FAPE)

The curricula of private educational agencies shall include all the areas for which instruction is provided, per the contract and the student's IEP. It shall be in writing and revised, as necessary. Agencies shall provide instruction and related services:

- A. in conformance with their contractual arrangement with the public agency;
- B. in conformance with an IEP that meets the requirements of the IDEA;
- C. at no cost to parents;
- D. that meets the standards that apply to education provided by the public agency including access to the general education curriculum, as determined appropriate by the IEP team; and,
- E. in accordance with the provisions of the Procedural Safeguards as referenced in Regulation V of this State Plan as they apply to private agencies.

Facilities, Transportation, Equipment, and Materials

Agencies shall provide appropriate facilities, equipment, and materials to effectively deliver special education and related services to all students serviced via contract.

Agencies shall comply with appropriate health and environment, occupancy, fire safety, transportation, and accessibility standards as are warranted by the services which the agency has contracted to provide.

Certificated and Licensed Professional Staff

Agencies shall retain appropriately qualified staff to deliver the services for which school districts have contracted. Personnel records shall be maintained for all certificated and licensed professional staff.

Agency and Student Records

Agencies shall maintain an organized system of accurate and current records which pertain to the administration of the agency and the delivery of special education and related services. Student records shall be maintained consistent with the provisions of the Family Educational Rights and Privacy Act, 34 CFR 99.1-99.67. Agencies shall provide a contracting school system, upon written request, complete and timely access to all agency records which pertain to the delivery of services to student(s) served through contractual agreement with that school system. Agencies shall maintain sufficient and accurate records to document the delivery of appropriate special education and related services.

Administrative and Support Services

Agencies shall provide appropriate administrative and support services, as needed, for the effective delivery of special education and related services for contract students. This includes, but is not limited to, financial accounting, physical plant maintenance and housekeeping, dietary services, student transportation, paraprofessionals , etc. All administrative and support staff must comply with appropriate education and/or experience qualifications for their respective duties.

Professional Development

Agencies shall assure that all personnel receive in-service training, as appropriate, to be effective in the delivery of special education and related services.

Agency Approval

Agencies will annually submit a written application for approval to the Division of Special Education. Disposition will be one of the following: approved without condition, conditional approval, or not approved.

Initial applicants shall be reviewed on-site. All approved agencies will receive an on-site review every five years or more frequently, if warranted, as part of the on-going approval process.

Nondiscrimination

Agencies shall ensure equal employment/educational opportunities regardless of race, color, creed, national origin or sex, in compliance with Title VI and Title IX, or disability, in compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

Appeal Procedure for Private Agencies

An agency will be provided with notice and an opportunity for a hearing upon disapproval of an application under these provisions. This notice shall contain:

- A. a statement of the basis upon which the Department has disapproved the application;
- B. a description of the corrective action needed to resolve the issue;
- C. advisement that a hearing may be requested before the Department not later than thirty (30) days from receipt of the notice of disapproval; and,
- D. information about the procedures applicable to the hearing process.

An applicant requesting a hearing pursuant to this section must do so in writing directed to the Assistant Commissioner for the Division of Special Education. Within thirty (30) days of the date of receipt of the request, the Assistant Commissioner or a designee shall schedule and conduct the hearing. Not later than thirty (30) days after the formal close of the hearing, a written ruling shall be forwarded to the applicant.

Appeal of the Assistant Commissioner's ruling is authorized pursuant to Chapter 536, RSMo.

2. CHILD COMPLAINT PROCESS

Statement of Jurisdiction

The Department of Elementary and Secondary Education, as a grantee under Part B of the Individuals with Disabilities Education Act (IDEA), must maintain procedures for receiving, investigating, and resolving complaints alleging that statutes and/or regulations implementing IDEA have been violated. This process is known as the child complaint process.

Limitations

A complaint must allege a violation by a responsible public agency that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing or compensatory services are applicable for a violation that occurred not more than three years prior to the date the complaint is received.

Initiating of a Complaint

A child complaint must be filed in writing and must:

State facts describing an alleged violation of state and/or federal regulations implementing IDEA.

The complaint should include the name, address, and phone number of the complainant as well as applicable information regarding the student(s) involved.

Processing of Complaint Record

Upon receipt, the complaint shall be reviewed by the complaint coordinator and necessary staff assigned to investigate it. The complaint shall also be entered into the complaint tracking process.

Investigation of the Complaint

The process of investigation shall include: staffing the complaint, providing written notice of the complaint to the responsible public agency, written acknowledgment to the complainant, data collection, and on-site visits where appropriate.

- A. Assigned staff will review the complaint to determine the parameters of the investigation. This would include determining whether an on-site visit will be necessary or whether the information may be obtained through the use of a data request and phone interviews. If an on-site visit is needed, the details of the visit shall be discussed with the complaint coordinator and is subject to approval of the coordinator.
- B. Upon receipt of a complaint and completion of the staffing, notice shall be sent to the responsible public agency against which the complaint is filed. The notice shall include a statement of the elements of the complaint, a description of the investigation process and, if possible, the details of any on-site visits, data requests, or phone interviews that are planned. The responsible public agency shall be invited to provide any relevant information.

- C. Upon receipt of a complaint and completion of the staffing, a written acknowledgment shall be sent to the complainant and shall include a statement of the elements of the complaint, a description of the investigation process, and an invitation to provide any relevant information the complainant wants considered.
- D. Documentation requests and phone interviews will be the primary methods of data collection in the complaint investigation. The data request should include documents relevant to the complaint and should be forwarded to a designated contact with the responsible public agency. It is the purpose of the data requests and phone interviews to attempt, where possible, to resolve the complaint without an on-site visit.
- E. If the investigation requires an on-site visit, separate notice to the responsible public agency shall be given. This notice may be given by phone, but should preferably be in writing. If the notice is given by phone, then a confirmation in writing should follow-up the phone conversation. The notice shall include a statement of the records to be made available, staff to be interviewed, and any need for access to school or agency facilities.

Investigation Timelines

The Department of Elementary and Secondary Education shall have, upon receipt of the completed complaint, sixty (60) calendar days to investigate and resolve the complaint. Extension of this time limit may be granted by the Commissioner of Education, if exceptional circumstances exist with respect to the particular complaint. If such an extension is given, notice shall be given to the complainant and the responsible public agency under investigation, with documentation of that notice to be maintained within the child complaint file.

Resolution of the Complaint

Resolution of a child complaint shall be through the issuance of a Decision letter from the Commissioner of Education, Department of Elementary and Secondary Education. The Decision letter shall include findings of fact and conclusions, and provide reasons for the Decision. These findings would include a review of the investigation results, including any information in an on-site investigation or from a data request. The basis for resolution may be any one of the following:

- A. a decision that the responsible public agency is not out of compliance;
- B. a decision that the responsible public agency is out of compliance, but that voluntary corrective action has been taken by the public agency to bring the public agency into compliance;
- C. a decision that the responsible public agency is out of compliance, and ordering a corrective action with a timeline for submission to the Department of Elementary and Secondary Education. Corrective actions ordered by the Commissioner of Education may include, but are not limited to, technical assistance activities, negotiations or other actions to achieve compliance.

Final Decision

The findings of the Commissioner of Education related to the complaint shall constitute a final decision of the Department of Elementary and Secondary Education. No further appeal is available.

3. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

General CSPD Requirements (34 CFR 300.380)

Missouri has developed and is implementing a Comprehensive System of Personnel Development that is consistent with the purposes of Part B of IDEA through its State Improvement Plan/Grant. The Plan/Grant is consistent with the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the state. The Plan/Grant is designed to ensure an adequate supply of qualified special and regular education and related services personnel and is updated at least every five years.

The State Improvement Plan/Grant meets the following requirements regarding an analysis of the State and local needs for professional development for personnel to serve children with disabilities. The data includes:

- A. the number of personnel providing special education and related services;
- B. relevant information on current and anticipated personnel vacancies and shortages; and,
- C. the extent of the certification or retraining necessary to eliminate shortages based on existing assessments of personnel needs.

The State Improvement Plan/Grant describes the strategies the state will use to meet the needs described above for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities. The plan includes a description of how the State will:

- A. Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities including how the State will work with other States on common certification criteria;
- B. Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;
- C. Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;
- D. Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;
- E. Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel;
- F. Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;
- G. Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research

- and other sources, and how the State will, if appropriate, adopt promising practices, materials, and technology;
- H. Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are under-represented in the fields of regular education, special education, and related services;
 - I. Insure that the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and,
 - J. Provide for the joint training of parents and special education, related services and general education personnel.

4. FULL EDUCATIONAL OPPORTUNITIES GOAL

The State of Missouri has established a goal of providing a full educational opportunity for all students with disabilities, ages birth through twenty-one (21) years, within the State.

The state began provision of full educational opportunities for all students with disabilities between the ages of five (5) and twenty-one (21) years on July 1, 1974.

The state began provision of full educational opportunities for all students with disabilities between the ages of three (3) and twenty-one (21) years on July 1, 1991.

The state began provision of full educational opportunities for all infants and toddlers (birth through age two (2)) with disabilities on October 1, 1995. The state will begin provision of full educational opportunities for students through the age of twenty-one (21) in 2010.

Full implementation of the goal will include the provision of a free appropriate public education for all students with disabilities ages three (3) through twenty-one (21) years, and the provision of early intervention services for infants and toddlers with disabilities (0 through 2) and their families.

To facilitate implementation of the goal, the Missouri Department of Elementary and Secondary Education collects information from local school districts and other agencies providing services for children with disabilities. This information includes:

- A. number, age, disability, and location of children with disabilities receiving special education services;
- B. number of personnel employed by public agencies to provide special education services;
- C. number of children with disabilities exiting the educational system; and,
- D. federal, state, and local funds expended for special education and related services.

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO THE FULL EDUCATIONAL OPPORTUNITIES GOAL:

*(Section 162.675(4), RSMo)
(Section 162.680(1), RSMo)
(Section 162.680(2), RSMo)*

*(Section 162.700(1), RSMo)
(Section 162.705(1), RSMo)
(Section 162.710, RSMo)*

5. METHODS OF ENSURING SERVICES

Methods of Ensuring Services (34 CFR 300.142)

Establishing Responsibility for Services

The Assistant Commissioner of Special Education for the Department of Elementary and Secondary Education (DESE) ensures that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency and the DESE, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any interagency dispute. The agreement or mechanism must include the following:

- A. agency financial responsibility: An identification of, or a method for defining, the financial responsibility of each agency for providing services to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the public agency (or the State agency responsible for developing the child's IEP);
- B. conditions and terms of reimbursement: The conditions, terms, and procedures under which the responsible agency must be reimbursed by other agencies;
- C. interagency disputes: Procedures for resolving interagency disputes (including procedures under which the responsible public agency may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism; and,
- D. coordination of services procedures: Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.

Obligation of Noneducational Public Agencies

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR 300.5 relating to assistive technology devices, 34 CFR 300.6 relating to assistive technology services, 34 CFR 300.24 relating to related services, 34 CFR 300.28 relating to supplementary aids and services, and 34 CFR 300.29 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

A noneducational public agency may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context. If a public agency other than an educational agency fails to provide or pay for the special education and related services, the LEA (or State agency responsible for developing the child's IEP) shall provide or pay for these services to the child in a timely manner. The LEA or State agency may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency shall reimburse in accordance with the terms of the interagency agreement or other mechanism and the conditions and terms of reimbursement.

6. PARTICIPATION IN ASSESSMENTS

Children with disabilities are included in the general State and district wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.

The State has developed guidelines for IEP teams to use in making decisions about the participation of students with disabilities in the general state assessment program. When an IEP team determines it is not appropriate for a student with a disability to participate in the general State assessment program, the student shall participate in the alternate State assessment.

Children with disabilities who cannot participate in general State assessments shall participate in the State alternate assessment beginning July 1, 2000.

Local school districts must develop guidelines for the participation of children with disabilities in district wide assessment programs with appropriate accommodations and modifications in administration, if necessary. When IEP teams determine children with disabilities cannot participate in district wide assessment, they must document why and how the child will be assessed.

Reporting

The Department of Elementary and Secondary Education reports and makes available to the public the following information:

- A. number of children with disabilities participating:
 - 1) in regular state assessments; and,
 - 2) the alternate state assessment.
- B. The performance results for children participating in regular and alternate state assessments when they are statistically sound and do not result in the disclosure of performance results identifiable to individual children.

Reports to the public include aggregated data that include the performance of children with disabilities together with all other children and disaggregated data on performance of children with disabilities.

The Department of Elementary and Secondary Education reports this information with the same frequency and in the same detail as it reports on the assessment of nondisabled children beginning July 1, 1998, for regular state assessments and beginning July 1, 2000, for alternate State assessment.

7. PERFORMANCE GOALS AND INDICATORS

The State of Missouri has established the following goals for the performance of children with disabilities in Missouri. These goals promote the purposes of IDEA and are consistent, to the maximum extent appropriate, with goals and standards that have been established by the state for all children:

- A. The performance level of children who receive special education services prior to age 5 will increase on the School Entry Profile.
- B. The percentage of students with disabilities in Grade 3 and 7 who are proficient readers will increase, while the percentage that have Missouri Assessment Programs - Communication Arts (MAP-CA) read to them will decrease.
- C. The percentage of students with disabilities scoring at the Step 1 and Progressing achievement level will decrease, while the percentage of students with disabilities scoring at Proficient and Advanced will increase for each of the MAP subject area assessments.
- D. The percentage of students with disabilities graduating with a regular diploma will increase.
- E. The percentage of students with disabilities that drop out of school will decrease.
- F. The percentage of students with disabilities participating in vocational preparation programs is consistent with the percentage of participation in the general population of students.
- G. The percentage of students with disabilities employed or enrolled in continuing education six months post vocational training will increase or be maintained at a high level.
- H. The percentage of students with disabilities employed or enrolled in continuing education six months post graduation will increase or be maintained at a high level

Every two (2) years the Missouri Department of Elementary and Secondary Education will report to the Secretary of Education and the public of Missouri, the progress of the State and of the children with disabilities in the State, toward meeting these goals.

Based upon the assessment of the progress, the State will revise its State Improvement Plan as needed to improve its performance.

8. PERSONNEL STANDARDS (34 CFR 300.136)

Policies and Procedures

Missouri's policies and procedures ensure that personnel necessary to carry out the purposes of Part B of IDEA are appropriately and adequately prepared and trained. The policies and procedures are consistent with this section and provide for the establishment and maintenance of standards that are consistent with any State Board of Education approved certification, or Missouri licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services. Missouri has identified the specific occupational categories required to provide special education and related services within the State including roles, job titles, and qualifications. The Missouri Department

of Elementary and Secondary Education will revise or expand occupational categories as needed.

Steps for Retraining or Hiring Personnel

The State has developed procedures for Speech Implementers to serve students with disabilities in areas where there are shortages of Speech and Language therapists. The State through the State Improvement Plan is offering a Distance Learning program targeted to Implementers to assist them in attaining State Board Certification. All Implementers and district administrators were notified of the program in the spring of 1999. Tuition reimbursement is also being offered to the Implementers.

In order to meet the shortages of special education teachers in some areas of the state, tuition reimbursement is being offered to general education teachers and paraprofessionals who are interested in obtaining special education certification. All districts were notified of this program in the spring of 1999. All individuals participating in these programs have three years to reach full certification.

Status of Personnel Standards in the State

The Missouri Department of Elementary and Secondary Education utilizes a variety of sources to determine the status of personnel standards in the state. Each year a survey is conducted in the state to identify personnel needs for each profession or discipline providing special education or related services.

The Missouri Department of Elementary and Secondary Education also contracts with Southwest Missouri State University to conduct an annual survey of Missouri districts to determine Supply and Demand of all teachers by state and region. Each local district also reports to the Department of Elementary and Secondary Education the number of teachers and other personnel employed to provide special education and related services.

All data are used by the State to determine the status of personnel standards in the State. The determination is based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline. Information is on file at the State office and is available to the public.

Applicability of State Statutes and Agency Rules

In identifying the highest requirements in the State for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children with disabilities are considered.

Use of Paraprofessionals and Assistants

Missouri allows paraprofessionals, paraeducators and assistants who are appropriately trained and supervised to be used to assist in the provision of special education and related services to children with disabilities.

Local school district must provide each paraprofessional or paraeducator with the orientation and training necessary for the individual to perform the duties associated with the work assignment. At a minimum, such training shall include information and experiences related to:

- A. the type of disabilities displayed by the students with whom they will work;
- B. basic principles of behavior modification;
- C. basic instructional techniques expected to be used (demonstration, modeling, cueing, reinforcement, correction, etc.); and,
- D. other areas as necessary (positioning, lifting and transferring techniques, feeding procedures, etc.).

Paraprofessionals and paraeducators who do not hold a teaching certificate shall receive a minimum of 15 hours of training during their initial year of employment and a minimum of ten (10) hours of training in subsequent years.

Personnel Standards

The Personnel Standards outlined in the following pages list the **Titles**, **Responsibilities**, **Educational Qualifications**, and appropriate Missouri **Licensure or Certification** requirements for the personnel providing special education and related services for students with disabilities. The **Titles** listed are not intended to be a finite listing of occupational categories. Districts can determine that other positions are needed and request approval as described under the job title “Other Pupil Personnel”.

The descriptions listed under **Responsibilities** are not an all inclusive list. Districts should review applicable Practice Acts, code of ethics, and content of an individuals' preparation program to determine if a designated individual can deliver specific services. Services must be provided consistent with the appropriate guidelines and requirements specified by the individual licensure requirements. In addition, the administration of some standardized assessments have specific requirements for administration. Personnel, with the appropriate education and training, may be qualified to administer these assessments and may hold a variety of job titles.

The **Educational Qualifications** indicate the highest entry-level academic degree needed for state approved licensure or certification. Districts may employ individuals with qualifications that exceed these requirements. **Licensure and Certification** requirements are those currently in place and are subject to change by the appropriate governing agency. Specific requirements are available from the appropriate licensing or certifying agency that is listed.

In order for personnel to be paid in full or part from IDEA Part B funds, they must meet the standards in the Personnel Standards Chart.

PERSONNEL STANDARDS

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Audiologist	Plans and implements screening, evaluation/diagnosis, and special education services for hearing impaired students.	Master's Degree	License issued by the State Board of Registration for the Healing Arts
Audiology Aide	Works under direct supervision of a licensed audiologist.	High school diploma or GED	Registration certificate issued by the State Board of Registration for the Healing Arts
Casemanager	An administrative function that includes oversight of the IEP process on an individual student basis.	Bachelor's Degree	Any valid Missouri special education certificate
Counselor • high school • middle school • elementary	Provides direct guidance and counseling to eligible students with disabilities not routinely provided to the entire school population.	Master's Degree	Counselor certification by the State Board of Education
Counselor, Licensed Professional	Provides individual and group counseling techniques, methods or procedures for the purposes of assessing, understanding or influencing behavior. Conducts assessments for aptitudes, intelligence, attitudes, abilities, achievement, interests or personal characteristics. Provides Therapeutic vocational/personal rehabilitation.	Master's Degree	Licensed by the Division of Professional Registration
Educational Diagnostician*	Administers educational evaluations and assists in determining eligibility for special education.	Master's Degree	<ol style="list-style-type: none"> 1. Must have one of the following certificates issued by the State Board of Education: <ul style="list-style-type: none"> • Special education • Guidance Counselor • School Psychological Examiner • School Psychologist 2. Licensed Professional Counselor licensed by the Division of Professional Registration
Interpreter of the Deaf	Facilitates communication between students with hearing impairments and hearing persons.	High school diploma or GED	Certified by the Commission for the Deaf and licensed by the Division of Professional Registration. After January 1, 2003, an intermediate certificate issued by the Commission for the Deaf and license issued by Professional Registration.
Music Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the American Music Therapy Association

*For more specific information concerning test administration, see the introduction to this section.

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Occupational Therapist	Provides occupational therapy and evaluation services to eligible students with disabilities.	Bachelor's Degree	License issued by the Missouri Board of Occupational Therapy
Occupational Therapy, Certified Assistant (COTA)	Provides occupational therapy services under the direction of a licensed occupational therapist.	AA degree	License issued by the Missouri Board of Occupational Therapy
Orientation and Mobility Specialist	Provides orientation and mobility services to eligible students with visual impairments.	Bachelor's Degree with specialization in orientation and mobility, teaching the blind and visually impaired, rehabilitation teaching, special education, occupational therapy, physical therapy or closely related area	<ul style="list-style-type: none"> • Certified by the Association for Education and Rehabilitation (AER) OR • Demonstrated proficiency in O&M as required by a current contract with Rehabilitation Services for the Blind
Orientation and Mobility, paraprofessional	Provides orientation and mobility services under the direction of an Orientation & Mobility Specialist.	Bachelors Degree in fields of study other than those listed above	<ul style="list-style-type: none"> • Demonstrated proficiency in O&M as required by a current contract with Rehabilitation Services for the Blind and 2 years supervised experience with blind/or visually impaired persons
Other Pupil Personnel	Any trained professional not identified above, who provides special education support services.	Personnel must have academic preparation in the assigned area or job related experience in the assigned area	For Exceptional Pupil Aid (EPA) the position must be assigned by the local board of education and must have prior written approval of the position's job description and qualifications by the Division of Special Education Department of Elementary and Secondary Education.
Paraprofessional	Assists with the implementation of IEPs under the direction of the teacher. Additional responsibilities may include meeting the physical needs of the student, Braille instruction, preparation of materials and providing other supports that may be necessary based on the students needs and disability.	High school diploma or GED OR If assigned to a school-wide Title I building, meets the paraprofessional requirements of the No Child Left Behind Act.	None

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Paraprofessional for Braille Instruction	Provides Braille instruction to implement IEP goals and objectives.	High school diploma or GED OR If assigned to a school-wide Title I building, meets the paraprofessional requirements of the No Child Left Behind Act.	Demonstrated proficiency in Braille as required by a current contract with Rehabilitation Services for the Blind.
Physical Therapist	Provides physical therapy and evaluation services to eligible students with disabilities.	Bachelor's Degree OR Master's Degree if graduated after December 31, 2002	License issued by the State Board of Registration for the Healing Arts
Physical Therapist Assistant	Provides Physical Therapy services under the direction of a physical therapist.	60 hours prescribed course of study, Associate's degree	License issued by State Board of Registration for the Healing Arts
Physician	Provides medical, evaluative, and diagnostic services, and assists in planning and implementing special education services for students with disabilities.	Medical Degree	Physician licensed by the State Board of Registration for the Healing Arts
Psychologist, School	Administers psychological tests, participates on evaluation teams, provides psychological services to students with disabilities as specified on the IEP, and assists in planning an implementing special education services.	Master's Degree	School Psychologist certification by the State Board of Education
Psychologists	Administers psychological tests, participates on evaluation teams, provides psychological services to eligible disabled students as specified on the IEP, and assists in planning and implementing special education services.	Master's Degree	Licensed by the Division of Professional Registration as a Psychologist
Recreational Therapist	Participates in the development and implementation of IEPs.	Bachelor's Degree	Certification recognized by the Recreational Therapy Association
School Nurse, LPN	Provides health services under the direction of an RN or Physician.	One year course of study in practical nursing	Licensed by the State Board of Nursing
School Nurse, RN	Provides screening, evaluative, and diagnostic health information. This person provides health services to eligible students with disabilities as specified on the student's IEP. The health services would include only those not routinely provided to the entire school population.	Associate's Degree	Licensed by the State Board of Nursing

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
School Psychological Examiner	Coordinates and/or participates on the multidisciplinary evaluation team, and assists in determining whether a student is disabled.	Master's Degree	School Psychological Examiner certification by the State Board of Education
School Social Worker	Provide services to parents of students with special education needs, assists in the development and implementation of IEPs. Assist in identification and assessment of individual's educational needs including social, emotional, behavioral, adaptive needs; develops and implements behavior intervention plans: provides individual, group, parent, and family counseling and consultation; serves as a liaison with home, school, and community.	Master's degree	Completion of an approved course of study in school social work accredited by CSWE or a School Social Work Specialist credential issued by National Association of School Social Workers (NASSW)
Social Worker, Licensed Clinical	Provides methods, principles, and techniques of casework, group work, client centered advocacy community organization, administration, planning, evaluation, consultation, research, psychotherapy and counseling methods and techniques to persons, families, and groups in assessment, diagnosis treatment, prevention and amelioration of mental emotional conditions. Delivers services that are billable to Medicaid.	Master's degree	License issued by Missouri State Committee for Social Workers
Special Education Administrator	Directs, coordinates, and supervises the district's special education services.	Master's Degree	Special Education Administrator Certificate by the State Board of Education.
Special Education Process Coordinator	Supervises the special education process from referral through placement and provision of services, appropriate identification and placement of students with disabilities; and, district compliance with state and federal requirements for special education.	Master's Degree	Certification in at least one area of special education or related area and knowledge of special education process requirements
Special Education Supervisor/K-12 • high school • middle school • elementary	Directs and assists special education teachers and teacher aides, grades K-12, or any combination thereof, in providing special education services to students with disabilities.	Master's Degree	Certification in at least one area of special education for the area and grade level for which supervision is provided.
Speech Implementer	Assists with the implementation of IEPs under the direction of a speech/language pathologist.	Bachelor's Degree	Missouri teaching certificate or Bachelor's Degree in Communications Disorders

TITLE	RESPONSIBILITIES	EDUCATIONAL QUALIFICATIONS	CERTIFICATES OR LICENSE
Speech/Language Pathologist	Provides direct instruction, consultation with teachers, develops IEPs, writes diagnostic reports, and may provide evaluation services.	Master's Degree OR License issued by the State Board of Registration for the Healing Arts	Speech Specialist certificate issued by the State Board of Education
Speech/Language Pathologist, Diagnostic	Provides evaluation services for students with suspected speech/language disabilities. This person does not have a caseload of students for provision of direct services.		
Speech/Language Pathology Aide	Works under the direct supervision of a licensed speech/language pathologist.	High school diploma or GED	Registration certificate issued by the State Board of Registration for the Healing Arts
Speech/Language Pathology Assistant	Assists with the implementation of IEPs under the direction of a licensed speech/language pathologist.	Bachelor's Degree in communication Disorders or Associate's Degree in SLP Assistant (2005)	Registration certificate issued by the State Board of Registration for the Healing Arts
Teacher <ul style="list-style-type: none">• Early childhood special education• Hearing impaired• Mild/moderate behavior disorders• Mild/moderate cross categorical• Mild/moderate learning disabilities• Mild/moderate mental retardation• Severe developmental disabilities• Visually impaired	Direct instruction, consultation with teachers, develop IEPs, writing evaluation reports, travel training, co-teaching, individualized assessments.	Bachelor's Degree	Special Education certification by the State Board of Education in <ul style="list-style-type: none">• Early Childhood• Hearing Impaired• Mild/moderate cross categorical• Mild/moderate behavior disorders• Mild/moderate learning disabilities• Mild/moderate mental retardation• Severe Developmental Disabilities• Visually Impaired
Vocational Resource Educator (VRE)	Assists with the development and implementation of IEPs and the placement of students with disabilities in vocational programs.	Bachelor's Degree	<ul style="list-style-type: none">• Special Education Certificate or• Counselor or Vocational Certificate and additional coursework as determined by the Vocational Division
Work Experience Coordinator (WEC) Vocational Adjustment Coordinator (VAC)	Plans, develops, implements, and supervises work experience programs for students with disabilities. Provides direct instruction, participates in IEP meetings, conducts screenings and work assessments.	Bachelor's Degree	Any special education certification issued by the State Board of Education

9. PUBLIC PARTICIPATION

The State of Missouri ensures that, prior to the adoption of any policies and procedures needed to comply with the Individuals with Disabilities Education Act, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

10. STATE ADVISORY PANEL

The State of Missouri maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. The advisory panel is appointed by the Commissioner of the Department of Elementary and Secondary Education (DESE). The Panel is a public governmental body as defined by Missouri's Open Meetings and Records Law and complies with the "Sunshine Law."

Membership (34 CFR 300.651)

The membership of the State advisory panel is representative of the State population and is composed of individuals involved in, or concerned with the education of children with disabilities, including:

- A. parents of children with disabilities;
- B. individuals with disabilities;
- C. teachers;
- D. representatives of institutions of higher education that prepare special education and related services personnel;
- E. state and local education officials;
- F. administrators of programs for children with disabilities;
- G. representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;
- H. representatives of private schools and public charter schools;
- I. at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and,
- J. representatives from the State juvenile and adult corrections agencies.

A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities.

Advisory Panel Functions (34 CFR 300.652)

The State advisory panel shall:

- A. advise the SEA of unmet needs within the State in the education of children with disabilities;
- B. comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

- C. advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act;
- D. advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act;
- E. advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities; and,
- F. advise on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.

Advisory Panel Procedures (34 CFR 300.653)

- A. The advisory panel shall meet as often as necessary to conduct its business.
- B. By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the SEA. This report must be made available to the public in a manner consistent with other public reporting requirements of Part B of the Act.
- C. Official minutes must be kept on all panel meetings and must be made available to the public on request.
- D. All advisory panel meetings and agenda items must be announced enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.
- E. Interpreters and other necessary services must be provided at panel meetings for panel members or participants.
- F. The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties.

11. STATE EDUCATION AGENCY (SEA) RESPONSIBILITY FOR GENERAL SUPERVISION

It is the policy of the Missouri Department of Elementary and Secondary Education (DESE) that the requirements of Part B of the Individuals with Disabilities Education Act are implemented by public agencies in this state responsible for the education of children with disabilities.

The DESE ensures that each educational program for children with disabilities administered in the State, including each program administered by another State or local agency, is under the general supervision of the Division of Special Education, Department of Elementary and Secondary Education, and that their programs meet the educational standards of the DESE.

12. SUSPENSION AND EXPULSION RATES

The State of Missouri examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local education agencies in the State, or compared to the rates for nondisabled children within the agencies.

If the discrepancies are occurring, the Department of Elementary and Secondary Education reviews and, if appropriate, revises (or requires the affected State agency or local education agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the IDEA.

VII. LEA ELIGIBILITY

1. HEARINGS RELATED TO LEA ELIGIBILITY

It is the policy of the Department of Elementary and Secondary Education to provide a local school district or public agency with notice and an opportunity for a hearing prior to disapproval of an entitlement application under Part B of the Individuals with Disabilities Education Act. The provisions of this section shall apply if any of the following actions are taken by the Department of Elementary and Secondary Education in reference to a local school district or public agency application:

- A. disapproval of or failure to approve the application or project in whole or in part; or,
- B. failure to provide funds and amounts in accordance with the requirements of statutes and regulations.

Appeal by an applicant must be based upon an allegation that these actions by the Department of Elementary and Secondary Education violate state or federal statute or regulation. The Department shall provide a local school district or public agency with notice of intent to disapprove the application. That notice shall contain:

- A. a statement of the basis upon which the Department proposes to disapprove the application;
- B. possible options for resolving the issue;
- C. how the applicant can request a hearing not later than thirty (30) days from receipt of the notice of proposed disapproval; and,
- D. information about the proposed procedures to be followed in the hearing.

This notice shall be transmitted to the applicant by certified mail with return receipt requested.

Requests for a hearing pursuant to this section shall be in writing and shall be directed to the Office of the Commissioner of Education.

Within thirty (30) days of the date of receipt of the appeal request, the Commissioner of Education or a designee shall conduct a hearing on the record on the proposed action. No later than ten (10) days after the hearing, the Commissioner or a designee shall issue a written ruling, including findings of fact and a reason for the ruling. If the Department of Elementary and Secondary Education determines that its action was contrary to state or federal statutes or regulations, which govern the applicable program, the Department of Elementary and Secondary Education, shall rescind its action.

The ruling by the Commissioner of Education or a designee shall be final unless appealed pursuant to Education Division General Administrative Regulations which provides that notice of appeal must be filed with the Office of the Secretary of Education within twenty (20) days after the applicant receives notice of the decision. The decision of the Commissioner of Education shall contain a description of the applicant's right of appeal and shall be forwarded by certified mail with return receipt requested.

The Department shall make available at reasonable times and places to each applicant all records pertaining to any review or appeal that the applicant is conducting under this section, including the records of other applicants.

Failure to Provide Free Appropriate Public Education (FAPE)

The hearing procedure described in this section will be used when a district is determined to be unwilling or unable to provide a Free Appropriate Public Education (FAPE) as described in Regulation IV.1.

2. SEA IMPLEMENTATION OF SAFEGUARDS/LOCAL COMPLIANCE PLAN

The Missouri Department of Elementary and Secondary Education informs each public agency of its responsibility for ensuring the effective implementation of procedural safeguards for the children with disabilities served by that public agency through the dissemination of this State Plan to each public agency in the State.

The Missouri Department of Elementary and Secondary Education also requires each public agency to submit to the Missouri Department of Elementary and Secondary Education a written compliance plan which describes the public agency's plan for compliance with state and federal requirements for identifying and serving all children with disabilities. Public agencies must implement their compliance plans as approved by the Division of Special Education. Public agencies must update the compliance plan as required by the Division of Special Education.

Each public agency responsible for the provision of special education and related services must include in its local Compliance Plan assurances, which demonstrate that:

- A. children with disabilities have available to them the variety of educational programs and services available to children without disabilities in the area served by the public agency; and,
- B. children with disabilities have available to them nonacademic and extracurricular services and activities in such a manner as is necessary to afford them with an equal opportunity for participation in those services and activities. These services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to persons with disabilities, and employment of students including both employment by the public agency and assistance in making outside employment available.

The plan must include administrative procedures that have been adopted by the public agency's board of education or governing board and include the following components:

- A. certification statement assuring that the approved compliance plan governs the provision of special education services within the public agency;
- B. local compliance policies and assurances of compliance with and implementation of the provisions of Missouri statutes and regulations governing special education; and,
- C. a description of the public agency's administrative procedures which govern student identification including:
 - 1) child find activities to inform the citizenry of rights and needs of children with disabilities;
 - 2) an annual census of children with disabilities and suspected disabilities birth to twenty-one (21) years residing in the public agency's jurisdiction;
 - 3) a description of procedures for confidentiality of records and records management to include: informing the public about access rights, release of

- information, destruction of records, and training for persons collecting or using personally identifiable data; and,
- 4) a comprehensive evaluation and identification process addressing procedural safeguards, and eligibility criteria for determination of specific disability conditions.
- D. Administrative procedures which govern the development and implementation of Individualized Educational Programs including participants, required contents of the IEP, timelines for implementation, and procedures for assuring placement in the least restrictive environment.
- E. Administrative procedures that govern the public agency's consultation with representatives of private schools serving children with disabilities who live within the jurisdiction of the public agency to assure the development of a plan to identify and provide special education services to children with disabilities enrolled by their parents in private schools.
- F. Administrative procedures, which govern the implementation of an evaluation plan to determine the effectiveness of the public agency's special education services. The plan shall, at a minimum, include an evaluation of the district's performance on each of the State's performance goals for children with disabilities.

VIII. PRIVATE SCHOOLS

This section applies to children with disabilities who attend private or parochial schools or who are home schooled.

1. CHILDREN PLACED IN APPROVED PRIVATE AGENCIES BY PUBLIC AGENCIES

Responsibility of the SEA (34 CFR 300.401)

The Department of Elementary and Secondary Education ensures that when a child with a disability is placed in or referred to an approved private agency by the state or local education agencies, the child is provided special education and related services in conformity with an individualized education program and at no cost to parents. Each child must be provided an education that meets the standards that apply to education provided by the SEA and LEAs and each child has all the rights of a child with a disability who is served by the public agency.

Implementation by the SEA (34 CFR 300.402)

The Department of Elementary and Secondary Education will approve private agencies in accordance with standards developed for public agencies through procedures, such as a review of policies and procedures, written reports, parent questionnaires, and on-site visits.

All private agencies approved by the Department of Elementary and Secondary Education receive a copy of State Standards and Regulations for special education.

The Department of Elementary and Secondary Education will provide representatives from approved agencies the opportunity to participate in the development and revision of State standards that apply to them.

Any private educational agency which desires to contract with a local board of education or with the State Board of Education to provide special education and related services for students with disabilities shall make application to the state board of education for review and approval by staff of the Department of Elementary and Secondary Education as outlined in Regulation VI.1.

Responsibility of the LEA

Local school districts have the authority to contract with only those private agencies that have been approved by the State Board of Education.

2. CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE

- A. An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with 34 CFR 300.450-300.462 that are outlined in this section.

- B. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures.

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

The cost of reimbursement described in the above paragraph may be reduced or denied if at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information previously described in this section; or if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 34 CFR 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

- C. Notwithstanding the notice requirement, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:
- 1) the parent is illiterate and cannot write in English;
 - 2) maintaining the child in the public agency placement would likely result in physical or serious emotional harm to the child;
 - 3) the school prevented the parent from providing the notice; or,
 - 4) the parents had not received notice.

3. CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

Private school children with disabilities means children with disabilities enrolled by their parents.

Child Find for Private School Children with Disabilities (34 CFR 300.451)

Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school

children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out child find activities.

4. LEA REQUIREMENTS TO PROVIDE SERVICES TO PRIVATE SCHOOL STUDENTS

To the extent consistent with their number and location in each local district, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B IDEA by providing them with special education and related services.

Each public agency shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services.

NOTE: While IDEA does not provide an individual entitlement to such private school students and IDEA compliance requires only that services provided represent a proportionate share as explained below under "Expenditures," school districts need to consider the extent of services required under Missouri law.

Expenditures (34 CFR 300.453)

Each LEA must spend on providing special education and related services to private school children ages 3 to 21 with disabilities an amount that is the same proportion of the LEA's total subgrant under Section 611(g) of IDEA (K-12 entitlement) as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21. For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under Section 619(g) (Preschool Entitlement) of the IDEA as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

Each LEA shall consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and ensure that the count is conducted on December 1. The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

Expenditures for child find activities may not be considered in determining whether the LEA has met its requirements for expenditures.

State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

Services Determined (34 CFR 300.454)

No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

A. General

Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding identified to serve private school children with disabilities, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide:

- 1) Which children will receive services;
- 2) What services will be provided;
- 3) How and where the services will be provided; and,
- 4) How the services provided will be evaluated.

B. Genuine opportunity

Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

C. Timing

The consultation with private school representatives must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services.

D. Decisions

The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall initiate and conduct meetings to develop, review, and revise a services plan for the child, and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

Services Provided (34 CFR 300.455)

The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled under IDEA to any service or to any amount of a service the child would receive if enrolled in a public school.

Each private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that have been determined to be accessed by the private school child with disabilities. The services plan

must, to the extent appropriate, meet the requirements specified for an IEP with respect to the services provided, and be developed, reviewed, and revised consistent with requirements for IEPs.

Location of Services; Transportation (34 CFR 300.456)

Missouri case law and the Missouri Constitution prohibit the provision of services, equipment and personnel on-site at a child's private school.

If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school. The cost of the transportation may be included in calculating whether the LEA has met expenditure requirement.

Due Process Hearing Rights

There is no right to a due process hearing under the Procedural Safeguards in the case of a student enrolled by their parents in a private school student unless the issue pertains to child find activities, including evaluations.

State Child Complaints

Complaints that an SEA or LEA has failed to meet the requirements of 34 CFR 300.451-300.462 may be filed under the child complaint process in Regulation VI.2.

An LEA may not use funds available under Section 611 or 619 IDEA:

- A. for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site, and the classes include students enrolled in public schools and students enrolled in private schools (34 CFR 300.458); and,
- B. to finance the existing level of instruction in the private school, or to otherwise benefit the private school (34 CFR 300.459).

Use of Funds

An LEA may use funds available under Sections 611 and 619 of IDEA

- A. to make public school personnel available to the extent necessary to provide the special education and related services for private school children pursuant to this section. Public employees and services will be made available to students in the private school before school, after school, during school, on Saturdays, or during the summer on the grounds of the public school or a neutral site, at the discretion of the school district (34 CFR 300.460).

NOTE: The Missouri Constitution at Article I, Section 7, and Article IX, Section 8, prohibits the placement of public personnel, services, equipment and supplies or the provision of services in private/parochial schools. See SSD v Wheeler, 408 S.W. 2d. 60 (MO 1966), McVey v Hawkins, 258 S.W. 2d. 927 (Mo. banc 1953), Mallory vs. Barrera, 544 S.W. 2d. 556, and Brusca vs. State of Missouri ex rel. State Board of Education, 332 F. Supp. 275, affirmed 405 US 1050.

Use of Private School Personnel (34 CFR 300.461)

- A. The local school district may use funds to employ personnel employed at the private school to provide services if:
- 1) the private school employee performs the services outside of his or her regular hours of private school duties;
 - 2) the services are provided on public school grounds or a neutral site; and,
 - 3) the employee performs the services under public supervision and control.

Equipment/Supplies/Construction for the Benefit of Private School Children with Disabilities (34 CFR 300.462)

A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under Section 611 or 619 of IDEA for the benefit of private school children with disabilities.

The local school district shall spend no funds for repairs, construction, or minor remodeling of private school facilities.

LISTED BELOW ARE THE STATUTES OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO PRIVATE SCHOOLS:

Article I, Section 7

Article IX, Section 8

Section 162.996

IX. FUNDING

1. ANNUAL DESCRIPTION OF FUNDS

In order to receive funds under IDEA, the Missouri Department of Elementary and Secondary Education will annually describe how the amounts retained for State level activities will be used, how amounts will be allocated, and the percentage of those amounts, if any, that will be distributed to LEAs by formula.

If a state's plan for use of the funds described above does not change from the prior year, the State can submit a letter to the Office of Special Education Programs to meet the requirements of this section.

2. CLASS SIZE AND CASELOADS

A. Caseloads for Early Childhood Special Education (ECSE) Services

The number of personnel approved for each district will be based upon a review of the district's data for early childhood special education. ECSE funding will not be provided for staff serving children who are age 5 and kindergarten age eligible.

Position/Full Time Equivalent	Caseload
Teacher of Centerbased Self-Contained Classroom (see low incidence caseloads in following section)	12-22*
Paraprofessional in ECSE Classroom	12-22*
Teacher of Integrated Classroom (formerly referred to as Reverse Mainstream) (This number is for children with disabilities only; the class must have additional peers without disabilities.) At least $\frac{1}{2}$ of the children must have an IEP/qualify for ECSE. Total class (session) size may not exceed 12.	12-20*
Itinerant Teacher (Includes Speech Therapists and ECSE teachers providing special education services in early childhood programs and/or homes)	12-30
	31-50
Diagnostic Staff - for each position	160
Related Service Staff Employed by District (Occupational Therapist, Physical Therapist, and Speech Therapist)	45-50
ECSE Dedicated Program or Process Coordinator (Administrator)	200
Secretary	200
Nurse (FTE can be increased if additional nursing needs are specifically addressed in IEP(s))	175
Social Worker -	175
	diagnostic
	related services
	50

*based on 2 half day sessions with a class size of 6-11

B. Caseloads for Kindergarten - Grade 12 Special Education Services

The standards reflect approvable class size and caseloads at any given time during the school year. Variations may be considered upon request to the Division of Special Education, Department of Elementary and Secondary Education. Justification for approved variations may include, but not be limited to, consideration of the availability of certified personnel, the incidence of eligible students, their specified IEP requirements, and the availability of alternative resources for service. The Division of Special Education may require the assignment of a paraprofessional to a particular class as a condition of approval for a caseload exception.

- | 1) Low Incidence Self-Contained Classrooms
(may also be used for early childhood classrooms) | Class Size |
|---|------------|
| Multiple Disabilities; Deaf/Blind; Autistic | 5-9 |
| Physically & Other Health Impaired | 5-8 |
| Visually Impaired; Hearing Impaired | 5-8 |
| 2) Speech Language Pathologist may qualify for Exceptional Pupil Aid in two ways: | |
| a) The pathologist provides direct services to 40-60 children with disabilities. For some students in this count, the pathologist may not be the designated casemanager. | |
| b) The district may use the Caseload Calculation Worksheet described on the next page instead of the caseload range to qualify a Speech/Language Pathologist for approval of Exceptional Pupil Aid. | |

CASELOAD CALCULATION WORKSHEET

1. Total of instructional minutes available per week.	
2. Minutes per week spent in the following activities:	
a. planning time (250 minutes required)	
b. screening time	
c. diagnostic time	
d. staffing time	
e. meeting/consultation time	
f. travel time	
g. other duties	
h. ECSE related activities (therapy, testing, travel, consultation, meetings)	
TOTAL	
3. Subtract the total on line 2 from line 1.	
4. To determine number of hours available per week for therapy divide by 60.	
5. To determine number of hours available per day for therapy divide by 5.	
6. Multiply this number by a factor of 10.	
7. Round this number up to the highest number.	
The product of this number is the maximum number of students that can be served on this individual speech pathologist's caseload.	

Directions:

1. Find this number in your district's core data. Lunchtime is already backed out of minutes of instructional time in core data.
2. The minutes that are added together in this section will be an average of a typical week. The Missouri School Improvement Program (MSIP) resource standards require 250 minutes per week of planning time for all certificated staff.
3. The number obtained on step 7 represents an estimate of the maximum number of students the speech language pathologist would be able to serve. Speech language pathologists whose caseloads contain several students with significant disabilities that may require more services or other unique circumstances may need to have other considerations made concerning their caseload calculation.

This calculation considers the required activities involved in providing services for students who have speech and/or language disorders. The formula is designed to be flexible and will provide an accurate reflection of the responsibilities for one full-time speech/language pathologist.

C. All Other Special Education Caseloads

The number of students to be assigned to a class is determined by use of a formula which combines the number of IEPs for which a teacher is responsible with the aggregate number of equivalent student contact hours accruing to the teacher during the day. The sum equals a Caseload Number which may not exceed 60. The formula is as follows:

$$\#IEPs + CONTACT\# \leq CASELOAD\#$$

#IEPs equals the number of IEPs the teacher is responsible for on a case manager basis;

CONTACT# equals the aggregated number of equivalent student contact hours for the teacher during the day; and,

CASELOAD# equals the limit for service which may be provided by a particular program or class.

Definitions

CASELOAD# is a derived number for the formula and is defined as 60.

CONTACT# is the equivalent of the total number of student contact hours which accrue to the teacher during a normal school day. It includes all students served by the teacher, regardless of which teacher serves as the case manager. The CONTACT# is a computed value, determined by dividing the total student minutes per week (symbolized as STU.MINWK) by the number of minutes per day the teacher has available for direct contact instruction, (symbolized as TEA.MINDAY). Therefore:

$$CONTACT\# = STU.MINWK / TEA.MINDAY$$

STU.MINWK is determined by aggregating the number of minutes per week the students are assigned to the special education teacher, as stated on the student's IEP, without regard for which teacher serves as the Case Manager. STU.MINWK must also include student 'walk-in' time where the district's policy allows for such activity. For students served in a class-within a class (CWC), count only the minutes for up to the first five students.

TEA.MINDAY is the number of minutes per day the teacher is available for instruction in the special education class and is determined by dividing by five (5) the teacher's minutes of instruction per week as reported for special education assignments on the district's Core Data report.

An ALTERNATIVE method of determining TEA.MINDAY is to subtract the total number of minutes for planning time, supplemental duties and assignments, and non special education teaching assignments from the total number of minutes in the district's normal instructional day.

#IEPs is the number of IEPs the teacher is responsible for, on a case manager basis, and is the number traditionally reported as the teacher's caseload under the current State Board Caseload Standards.

How to Use the Formula

The following examples will illustrate the use of the formula:

Example #	STU.MINWK	TEA.MINDAY	CONTACT#	#IEPs	CASELOAD#
1.	8,558	315	27	19	46
2.	10,813	315	34	24	58
3.	13,693	310	44	14	58

In example #1 the teacher serves 19 students and is available for direct instruction 315 minutes per day. The 19 students aggregate, from the IEPs, a total of 8,558 minutes per week with this teacher. The low total minutes would indicate that, on average, these students have mild disabilities and do not require extensive special education service. Dividing the 8,558 STU.MINWK by 315 TEA.MINDAY yields a quotient of 27 for the CONTACT#. Using the formula CONTACT# + #IEPs <= CASELOAD#, add 27 + 19 to equal 46, a value which is less than the CASELOAD standard of 60. Not only is this class within caseload standards, additional students could probably be added to this teacher's caseload.

Example #2 illustrates the case wherein an additional 5 students, with a total of 2,255 minutes assigned to special education, are added to the caseload in example #1. The STU.MINWK now total 10,813 ($8,558 + 2,255$) which, when divided by the TEA.MINDAY of 315 gives a CONTACT# of 34. The teacher is now responsible for 24 IEPs ($19 + 5$). Adding the CONTACT# to the #IEPs yields a total of $34 + 24 = 58$, which is within the standard.

Example #3 also yields a CASELOAD# of 58 with a teacher serving 14 students. The needs of the students, as measured by the aggregate number of minutes from the IEPs, are more intense and thus the teacher is assigned fewer students. The STU.MINWK of 13,693 divided by the TEA.MINDAY of 310 yields a CONTACT# of 44. The CONTACT# of 44 added to the #IEPs of 14 results in a CASELOAD# of 58.

The IEP provides for students to "drop-in" to the special education classroom on an unscheduled but occasional basis, such as to read a test, then the amount of contact time due to these activities should be estimated and added to the aggregate total of the student minutes per week. If student IEP allows for walk-in or drop-in of students on a regular basis, then the amount of contact time must be estimated and added to the STU.MINWK total in order to prevent inflation of the CASELOAD#.

Implementation

The CASELOAD# of 60 is a LIMIT, not a GOAL. Depending upon the instructional needs of the students, districts will need to designate the appropriate CASELOAD# to be targeted for different situations. For example, elementary classes will generally have a smaller CASELOAD# than secondary classes, due to the greater individual student management needs presented by younger students. However, any class with students who exhibit behaviors requiring more

individualized attention may result in lower CASELOAD#s while classes with students with more independent behaviors may result in higher CASELOAD#s. In general, CASELOAD#s from 35 to 50 at elementary (less in the fall to allow for growth) and 40 to 55 at secondary are considered normal.

When the CASELOAD# rises above 50 the district should evaluate the class to determine whether or not full or part time paraprofessional assistance may be appropriate, especially with classes which more nearly resemble the traditional 'self contained' model. This evaluation should consider such factors as grade/age range of the students assigned; overt behaviors of specific students; students ability to work independently; and whether the teacher is providing support services or is responsible for the initiation of instruction and in how many areas.

Even classes with a CASELOAD# significantly below 60 may require an aide due to an individual student's needs or behaviors. In such cases the paraprofessional would likely be designated and assigned as a personal assistant aide rather than an instructional aide.

Requests for approval of classes for which the CASELOAD# will exceed 60 must be evaluated in terms of individual student and teacher needs. Such approvals will be granted sparingly. Depending upon the individual class situation, a paraprofessional may be required for certain periods, required full time, or permission to extend the CASELOAD# upward may be denied.

D. Alternative Caseload Calculation

Public agencies may submit a request to the DESE for approval of an alternative caseload calculation. The alternative methodology must be submitted in writing and focus upon how district personnel supported by state funds will be distributed. The alternative method cannot be implemented by public agencies unless approved by DESE. There is no appeal process for denied requests.

3. OPERATIONAL POLICIES AND GUIDELINES

Policy No. 1

EQUIPMENT, MATERIALS, AND SUPPLIES: PURCHASE, INVENTORY CONTROL, UTILIZATION, AND DISPOSITION

Materials, equipment, and supplies may be purchased. Prior to any purchases, the local education agency's (LEA) compliance plan for IDEA must be approved. Equipment, materials, and supplies purchased with Part B, IDEA funds are restricted in use to students with disabilities and for the purpose(s) specified in the request for approval or otherwise permissible under EDGAR.

INVENTORY CONTROL, UTILIZATION, AND DISPOSITION OF MATERIALS, SUPPLIES, AND EQUIPMENT (45 CFR, Part 74, Subpart O, Sections 74.130-74.145) (EDGAR)

Federal regulations describe property, other than real property, in two (2) categories: "equipment" and "supplies".

Equipment

"Equipment" means items that are electrical or mechanical in nature or function and have a useful life of at least a year and cost more than \$1,000 per unit. This definition includes the following types of items:

- A. equipment costing \$1,000 or more per unit;
- B. films and other audiovisual "sets" costing \$1,000 or more per unit; and,
- C. any other items such as "kits", "set", etc., which cost \$1,000 or more per unit, and which have a useful life of more than one year.

Requirements of the Inventory Control System to be Established

The following federal requirements must be followed in the establishment and maintenance of an inventory control system for equipment.

- A. Property records shall be maintained accurately. For each item of equipment, the records shall include:
 - 1) a description of the equipment, including manufacturer's model number, if any;
 - 2) an identification number, such as the manufacturer's serial number;
 - 3) identification of the grant under which the recipient acquired the equipment;
 - 4) the information needed to calculate the federal share of the equipment; (see Section 74.142)
 - 5) acquisition date and unit acquisition cost;
 - 6) location, use, and condition of the equipment and the date the information was reported; and,
 - 7) all pertinent information on the ultimate transfer, replacement, or disposition of the equipment.
- B. A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every two (2) years to verify the existence, current

- utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.
- C. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.
 - D. Adequate maintenance procedures shall be implemented to keep the equipment in good condition.
 - E. Where equipment is to be sold and the federal government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

Disposition of Equipment

When original equipment is no longer to be used in projects or programs currently or previously funded under IDEA-B, the LEA shall check to see if it is usable in other Federal programs and, if not, dispose as surplus equipment under board policy with the proceeds less ten (10) percent going back to special education.

Supplies

"Supplies" means items not electrical or mechanical in nature or function that cost \$500 or less per unit. This includes items that have a useful life of less than a year. Usually material items are expended, consumed, wear out or deteriorate, or otherwise lose their identity.

Disposition of Supplies

If supplies exceeding \$1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the federal government, the grant shall be credited by an amount computed by multiplying the federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, ten (10) percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

Requirements for Local Auditor's Review and Statement

- A. During the annual review made by the local LEA auditor, a review must be made of IDEA-B inventory control according to standard auditing procedures.
- B. The local LEA auditor must state in his/her annual audit report that "state and federal rules applicable to inventory control of materials and equipment are followed and that the LEA is in compliance with applicable federal requirements of the program".

Policy No. 2

RENTAL OR LEASE

The funds available to LEAs under IDEA-B may be used for facility rental or lease for the purpose of developing, providing or improving special education services. Any rental or leasing must comply with the requirements of Appendix A of part 36 of title 28 Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Guidelines for Buildings and Facilities”) or Appendix A, part 101-19.6 of Title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

Policy No. 3

FUNDING ACCOUNTABILITY -- CONSOLIDATED APPLICATIONS

Cooperative District Arrangement

Composed of LEAs that pool funds for the purpose of participating in coordinated, multi-district special education and related service programs, or for ease of fiscal management.

Fiscal Agent For a Cooperative District Arrangement

It is the responsibility of the fiscal agent to set up a clearing account for the purpose of accounting for revenues and expenditures associated with IDEA-B. LEAs may record this revenue in Code 54.35.

Fiscal Procedures for a Cooperative

- A. The fiscal agent shall record all expenditures of the cooperative; and,
- B. The clearing account with all substantiating documents shall be included in the biennial audit of the financial records.

Participating districts may access the cooperative application on the Division of Special Education Web site and copies from this site may be used for necessary documentation for the audits of the participating districts.

Policy No. 4

PERSONNEL STANDARDS AND REQUIREMENTS

Personnel paid in full or in part from IDEA-B funds must be appropriately prepared and trained as outlined in Regulation VI.8., Personnel Standards of this State Plan.

Personnel paid entirely with Federal funds or from Federal funds and at least one other source must maintain time and effort documentation prescribed in OMB Circular A-87.

Policy No. 5

AUDIT REPORTING AND RECORDS RETENTION

Auditing

A biennial audit of all LEAs will be due in the DESE as required by Sections 165.121, 326.011, 326.021, 326.111, 326.125, and 326.151, RSMo. Audit reporting of IDEA-B transactions should be a part of the regular audit reports and must be in accordance with OMB Circular A- 133.

Information submitted as required for Maintenance of Fiscal Effort will be checked for possible supplant concerns.

Retention of Records

Each LEA or fiscal agent receiving funds from IDEA-B shall keep intact and accessible all records supporting claims for such funds or relating to the accountability of the grantee for the expenditure of such funds:

- A. For three (3) years after the submission and acceptance of the final expenditure report for the fiscal year in which the expenditure was made or until all audit questions are resolved, whichever is later. The Web site for IDEA-B application will keep records for review for three years; and,
- B. Records with respect to equipment and supplies must be retained for three (3) years after their final disposition.

The records involved in any claim or expenditure that has been questioned shall be further maintained until necessary adjustments have been made and such adjustments have been reviewed and approved by the Department of Elementary and Secondary Education and/or the U. S. Department of Education.

Policy No. 6

FISCAL PROCEDURES

General

IDEA-B provides financial assistance to local education agencies (LEAs) to provide for the education of students with disabilities. LEAs may:

- A. Secure entitlement funds by submitting an approvable Compliance Plan as required by IDEA-B.
- B. Secure preschool grant funds by submitting an approvable grant proposal.

LEAs may only expend IDEA-B funds in a manner consistent with federal and state laws and regulations. The Federal regulations for IDEA-B were published in the 34 Code of Federal Regulations Part 300.

LEA Supplant vs. Maintenance Of Fiscal Effort

The topics of supplanting of state and local funded programs and maintenance of fiscal effort are similar but distinctly different concepts. The prohibition against the supplanting of state and locally funded programs with federal funds refers to replacing previously committed state/local funds with federal funds. Supplanting must be monitored at the “expenditure level”. Supplanting is addressed in 34 CFR 300-153, 184, and 230. Maintenance of fiscal effort simply implies a total or per-capita level of state and local expenditures in the current year that is equal to or greater than the preceding year. Maintenance of fiscal effort is addressed in 34 CFR 300-154, 231, 232, and 233. Any federal funds expended during a year in which noncompliance of the prohibition against supplanting or lack of maintenance of fiscal effort occurs are recoverable.

Fiscal effort by a LEA shall be determined by the combined state and local expenditures, including salaries and employee benefits, for full-time staff and the prorated costs of part-time staff that provide special educational services to students with disabilities in the school district.

- A. The total amount or average per capita amount of state and local school funds budgeted by the LEA for expenditures in the current fiscal year for the education of students with disabilities must be at least equal to the total amount or average per capita amount of state and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for:
 - 1) the voluntary departure, by retirement or otherwise, or departure by just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.
 - 2) a decrease in the enrollment of children with disabilities.
 - 3) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child has left the jurisdiction of the agency, has reached the age at which the obligation of the agency to provide FAPE to the child has terminated, or no longer needs the program of special education.
 - 4) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

Adjustment to Local Fiscal Effort

In any fiscal year for which a district's federal allocation exceeds the amount the district received in the previous fiscal year, the district may reduce the level of expenditures required for the education of children with disabilities from state and local funds by fifty percent of the amount in excess.

If a local educational agency exercises the authority to reduce their local effort, the agency shall use an amount of local funds equal to the reduction in expenditures to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

If a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures for that fiscal year.

Districts submitting application for IDEA, Part B funds must provide assurance that funds provided under Part B of the Act shall be used to supplement and, to the extent practicable, increase the level of state and local funds expended for the education of students with disabilities and, in no case, to supplant those state and local dollars except as provided in IDEA. Procedures for meeting this requirement will be in conformity with the regulations as specified at 34 CFR 300.230 and 34 CFR 300.231.

A district which budgets at least the same total or per-capita amount of state and local funds for special education and related services in the current fiscal year compared to the amount actually expended for those purposes in the immediately preceding fiscal year would be in compliance with 34 CFR 300.231 assuming that all other applicable provisions of the IDEA-B have been met, the district would be eligible to receive its grant.

The district must be able to verify the actual amount expended during the first preceding year. Any federal funds expended during a year of noncompliance with either supplant or maintenance of fiscal effort requirements are recoverable.

In the event that the district violates the provisions of 34 CFR 300.231 by failing to maintain fiscal effort, the Department of Elementary and Secondary Education will seek to recover the misspent funds. Office of Management and Budget Circular A-133 requires that the state agency determine whether its subrecipients have spent the federal funds in accordance with applicable laws and regulations and further shall insure that a corrective action is taken within six (6) months after instances of noncompliance with federal laws and regulations have been discovered.

To fulfill this requirement, the state provides two (2) options to the district for resolving the violation and the subsequent recovery of the misspent funds.

Option I - The district may refund the total amount of the grant or the amount by which the district failed to maintain effort from the first preceding fiscal year, whichever is the lesser amount. Such refund of funds shall be made from state and/or local dollars available to the district.

Supporting documentation may be required by the Department to substantiate the status of the local program. The amount of expenditures for special education and related services during the year in which the violation occurred shall be considered as the base year for future determination of fiscal effort.

Option II - The district may deobligate the total amount of the grant or the amount by which the district failed to maintain effort from the prior fiscal year, whichever is the lesser amount. Such a deobligation of federal funds would include a corresponding obligation of a similar amount of state or local dollars for the first preceding fiscal year. By book transfer, the state agency will apply the deobligated federal funds to the district's current IDEA-B project.

Supporting documentation may be required by the Department to substantiate the status of the local programs.

If the district chooses to deobligate the federal funds, the amount of expenditures for the first and second preceding years will be equal and will be considered as the base amount for future determination of fiscal effort.

Accounting and Payment Procedures

- A. Each LEA and each designated fiscal agent for a cooperative application shall maintain a system of accounting which will reveal the cash received and disbursed under the project and the amount of all paid and unpaid obligations attributable to the project. Such funds shall not be commingled with other available monies.
- B. Funds will be transmitted to LEAs or fiscal agents for cooperative applications for the operation of approved activities according to a schedule determined by the DESE. Districts will be advised of the schedule of payments.
- C. Each LEA or designated fiscal agent shall submit a final report that reflects all actual expenditures. This report shall be due no later than thirty (30) days after the ending date of approved plan.
- D. The final payment of cash due a LEA will be transmitted upon receipt and approval by the DESE of the final report. If the LEA has received more money through an approved discretionary project than was actually expended, the LEA shall refund the overpayment within thirty (30) days of the request by the DESE. Overpayment by the DESE on entitlement projects will be credited to initial payment on the ensuing year's project. Appropriate records shall be maintained to verify all expenditures of funds received under IDEA-B.

Withholding of Payments

Whenever the DESE, after reasonable notice and opportunity for a hearing to any LEA, finds a failure to comply with any provision of applicable state or federal law, the DESE will notify the LEA of curtailment of funds under IDEA-B. Only after compliance has been established will funds be released.

Prior to initiating a hearing under this section, the DESE will attempt to resolve any apparent differences with the LEA.

Policy No. 7

INDIRECT COSTS POLICY FOR IDEA-B PROJECTS

In addition to the direct cost of providing instruction and support service to students with disabilities, an IDEA-B project may include indirect costs for administrative services not readily identifiable with a project. Administrative services which typically could be claimed through the indirect cost method includes such cost as general administration of the project, personnel services, budget and financial services, purchasing and procurement, and other services usually provided through the central office of the LEA.

The administrative costs associated with IDEA-B projects are of a type that cannot be readily identifiable. Some examples would be postage, telephone, cost of writing checks, cost of preparing and submitting purchase orders, and other similar costs.

OMB Circular A-87 and the Education Division General Administrative Regulations make it possible for school districts to recover such costs through the establishment of a restricted indirect cost rate. The restricted indirect cost rates are applicable to IDEA-B programs.

A restricted indirect cost rate is, in simplified language, the ratio of general administrative costs incurred by an LEA to all other costs, with certain exclusions. The ratio is determined using a procedure and formula developed by the DESE and approved by the federal government. Each LEA that wishes to recover indirect costs under IDEA-B must request the proper forms from the School Finance Section. Upon completion, the forms will be returned to the School Finance Section for review and approval.

The following are examples of costs that may not be claimed as direct costs to IDEA-B programs, but may be recoverable under the indirect cost method:

- A. salaries of persons who provide administrative services to IDEA-B activities on less than an exclusive basis and whose time cannot be determined and recorded in auditable manner without undue effort;
- B. the salaries of any persons, whether full or part time, who engage in activities which have as their purpose the general regulation, direction, and control of the affairs of the LEA such as bookkeeping, finance, purchasing, data processing, secretarial, clerical, or other personnel services;
- C. audit costs; and,
- D. general administrative expenses such as postage, telephone, administrative travel, and office supplies.

Indirect costs may be claimed by multiplying the approved indirect cost rate by the total direct project costs, minus costs for capital outlay, debt services, or election expenses unless the election is required by a program statute. Should a LEA reduce or increase its IDEA-B project budget during the project period, or fail to expend the entire project budget, the amount of indirect cost allowed must be adjusted accordingly. Records of use of indirect costs calculations will be kept for audit purposes by the local district.

4. MAINTENANCE OF STATE FISCAL SUPPORT

The Missouri Department of Elementary and Secondary Education assures that the State of Missouri will not reduce the amount of its state financial support for special education and related services for children with disabilities or otherwise made available because of excess costs of educating those children, below the amount of that support for the preceding year.

5. POLICIES AND PROCEDURES FOR THE USE OF PART B FUNDS

It is the policy of the Department of Elementary and Secondary Education to award a minimum of 75 percent of the funds received under IDEA, Part B, to local education agencies (LEAs) that have established their eligibility under Section 613, and to state agencies that receive funds under Section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under Section 613, for use in accordance with Part B of IDEA.

Allocation to Local Education Agencies

Interim Procedure-For each fiscal year of which funds are allocated to States under subsection (d) (2), the Missouri Department of Elementary and Secondary Education shall allocate funds in accordance with Section 611(d) of the Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

Permanent Procedure-For each fiscal year for which funds are allocated to States under subsection (e), the Missouri Department of Elementary and Secondary Education shall allocate funds as follows:

- A. Base Payments - The Missouri Department of Elementary and Secondary Education shall first award each agency the amount that agency would have received under this section for the base year, as defined in subsection (e) (2)(A), if the Missouri Department of Elementary and Secondary Education had distributed 75 percent of its grant for that year under section 611(d), as then in effect.
- B. Allocation of remaining funds - After making allocation, the Missouri Department of Elementary and Secondary Education shall allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children within the district, and allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the Missouri Department of Elementary and Secondary Education.

Eligible districts will receive a proportionate share of the total state allocation based upon the number of students in the local district as compared with the aggregate number of students in all districts in the state.

The LEA must have on file with the SEA information to demonstrate that amounts provided to the LEA under Part B of IDEA will be expended in accordance with the applicable provisions of the IDEA, will be used to only to pay the excess costs of providing special education and related services, and will be used to supplement State, local, and other Federal funds and not to supplant those funds.

Early Intervening Services

A local educational agency may not use more than 15 percent of the amount such agency receives under Part B for any fiscal year, less any amount reduced by the agency under adjustments to local fiscal effort, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

In implementing coordinated, early intervening service, a local educational agency may carry out activities that include:

- A. professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- B. providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Local Agency Use of Funds

Funds provided to the local educational agency under this part may be used for the following activities:

1. Services and aids that also benefit nondisabled children- For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.
2. Early intervening services- To develop and implement coordinated, early intervening educational services as described above.
3. High cost education and related services- To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.
4. Administrative case management- A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities that is needed for the implementation of such case management activities.

State Agency Use of Funds

The remainder of the funds is for State-level activities as described below.

For each fiscal year, the Secretary determines and reports to the Missouri Department of Elementary and Secondary Education an amount that is 25 percent of this amount Missouri received for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of:

- A. the percentage increase, if any from the preceding fiscal year of the State's allocation under Section 611 or the Act; or,
- B. the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

State Level Administration

For the purpose of administering Part B of the Act, including Section 619 of the Act (including the coordination of activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities), the Missouri Department of Elementary and Secondary Education does not use more than five (5) percent of the maximum amount it may retain under 34 CFR 300.602(a) for any fiscal year.

- A. The Missouri Department of Elementary and Secondary Education uses funds under 34 CFR 300.620 for administration of State activities under Part B of the IDEA and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;
- B. approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;
- C. technical assistance to LEAs with respect to the requirements of Part B of the IDEA;
- D. leadership services for the program supervision and management of special education activities for children with disabilities; and,
- E. other State leadership activities and consultative services.

The Missouri Department of Elementary and Secondary Education may use not more than twenty (20) percent of the remainder of its funds under 34 CFR 300.620 for any of the following A through H:

- A. support and direct services, including technical assistance and personnel development and training;
- B. administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985;
- C. to establish and implement the mediation process required by 34 CFR 300.506, including providing for the costs of mediators and support personnel;
- D. to assist LEAs in meeting personnel shortages;
- E. to develop a State Improvement Plan under subpart 1 of Part D of the Act;
- F. activities at the State and local levels to meet the performance goals established by the State under 34 CFR 300.137 and to support implementation of the State

- Improvement Plan under subpart 1 of Part D of the Act if the State receives funds under that subpart;
- G. to supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under Section 611 of the Act. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under Part C of the Act; and,
 - H. for subgrants to LEAs to assist them in providing direct services and in making systemic changes to improve results for children with disabilities through one or more of the following:
 - 1) direct services, including alternative programming for students who have been expelled from school, and services for students in correctional facilities, students enrolled in state-operated or state-supported schools, and students in charter schools;
 - 2) addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under sub-part D of IDEA;
 - 3) adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources;
 - 4) establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families;
 - 5) increasing cooperative problem-solving between parents and school personnel, and promoting the use of alternative dispute resolution.

6. PROHIBITION AGAINST COMMINGLING

The Missouri Department of Elementary and Secondary Education assures that funds of Part B of the IDEA are not commingled with state funds by the use of a separate accounting system that includes an audit trail of expenditures for Part B funds as specified in 34 CFR 300.152.

Local education agencies may use funds under Part B of the IDEA for the costs of special education and related services and supplementary aids and services provided in a regular class or other education related setting to a child with a disability in accordance with the IEP of the child, even if one or more non-disabled children benefit from these services.

7. RECOVERY OF FUNDS FOR MISCLASSIFIED CHILDREN

It is the policy of the Department of Elementary and Secondary Education to recover IDEA funds paid for services to any child who is determined to be misclassified. Children misclassified, in accordance with 34 CFR 300.145,611 (a) or (d), include those who:

- A. are not enrolled in a school or program operated or supported by a public agency;
- B. are not provided special education services that meet State standards;

- C. are not provided with a related service that they need to assist them in benefiting from special education; and,
- D. are receiving special education funded solely by the Federal Government.

The Department of Elementary and Secondary Education will receive and investigate information, complaints, or allegations that a child receiving special education services has been misclassified as eligible for funds. Further, the State Department of Elementary and Secondary Education shall make routine periodic inspections of school districts having a responsibility to provide special educational services to children with disabilities to determine whether such children receiving special educational services have been misclassified.

Procedure for Recovery of Funds

- A. After determination that a district/public agency has misclassified a student, the Division of Special Education shall:

- 1) notify the district/public agency of the findings in writing;
- 2) advise the district/public agency of the right to a hearing as specified in Regulation VII.1., Hearing Related to LEA Eligibility;
- 3) initiate recovery actions if the results of the hearing so indicate or if the district/public agency does not seek a hearing; and,
- 4) notify the district/public agency, in writing, that action will be taken to adjust the entitlement payment to the district in the amount consistent with the permanent procedure used for allocating Federal funds to which the district was entitled under IDEA (Section 611).

If the balance of entitlement payments is insufficient to pay the amount due, repayment by the district must be received within sixty (60) days of the date of the letter. If the district/public agency fails to make the required payment within the time authorized, the Department of Elementary and Secondary Education shall notify the Office of the State Attorney General, which office will initiate appropriate action to recover the funds due.

8. STATE LEVEL NONSUPPLANTING

The Missouri Department of Elementary and Secondary Education assures the Secretary that funds paid to the state under Part B of the IDEA are used to supplement the level of federal, state, and local funds expended for special education and related services provided to children with disabilities under Part B of the IDEA and, in no case, to supplant these federal, state, and local funds beyond that provided by IDEA.

X. SPECIAL SCHOOL DISTRICTS

Under the Merry litigation settlement, Parkway School District has some joint compliance responsibilities that exceed responsibilities that apply to other component districts. Such responsibilities of the Merry case are incorporated herein by reference.

1. BASIS FOR COMPLIANCE

The mandate to provide appropriate educational services to students with disabilities is a function of both federal and state statute. The purpose of Regulation X is to define the scope of these requirements. In this and other portions of Regulation X, reference is made, where possible, to the specific statutory or regulatory source of each of the stated requirements. References are made to the United States Code (USC), the Code of Federal Regulations (CFR), the Revised Statutes of Missouri (RSMo.) and the Missouri Code of State Regulations (CSR).

- A. Section 504 of the Rehabilitation Act of 1973: The foundation of the assurance of a free appropriate public education for students with disabilities is found under Section 504 of the Rehabilitation Act of 1973 (Section 504). 29 USC Sections 706(7), 794, 794a, 794b. This statute and its accompanying regulations, in part, require that elementary and secondary schools provide appropriate regular or special education and related aids and services necessary to meet the needs of students with disabilities as adequately as the needs of nondisabled students are met. 34 CFR 104.33(b). The requirements of Section 504 are applicable to any recipient of federal financial assistance from the U.S. Department of Education and to any program or activity that receives or benefits from such assistance. 34 CFR 104.2. This would include both the special school district and the component districts within the special district.
- B. Part B of the IDEA: This statute represents a major federal initiative in special education. Part B of the Individuals With Disabilities Education Act (IDEA) provides specific grants of financial assistance to the states for the purpose of assuring appropriate special education and related services to students with disabilities 20 USC Sections 1400-1485.
- C. Code of State Regulations: State regulation found at 5 CSR 70-742.140 reflects the State Plan for Special Education, Regulations Implementing Part B of the Individuals with Disabilities Education Act (State Plan). This State Plan is the primary policy document adopted to assure compliance with the IDEA. Submitted by the Department of Elementary and Secondary Education on behalf of the entire state, its provisions are applicable to each public agency that has direct or delegated authority to provide special education and related services. These requirements are binding regardless of whether an agency is a direct recipient of funds under the IDEA 34 CFR 300.2.
- D. Revised Statutes of Missouri: Chapter 162 RSMo. contains the enabling legislation required, in conjunction with the provisions of this State Plan, to meet the federal and state mandates for appropriate educational services for students with disabilities. One of the service options available under state statute is the creation

of a special school district pursuant to Section 162.825 RSMo. The referendum establishing a special school district creates a distinct public school district for the purpose of providing special education and related services to students with disabilities within the component districts of which it is comprised.

- E. Compliance with Federal Requirements: Although the statutory authority to provide special education and related services under Section 162.825 RSMo. allows a special school district to become a subgrantee under the IDEA, this does not relieve component districts from compliance responsibilities under Section 504. The requirements of Section 504 extend to both special and general education services to students with disabilities, and if not for the existence of a special school district, the component districts would be required to provide both special and general education services. Thus, it is through the compliance plan submitted by the special school district that the component districts not only benefit from the federal grants under the IDEA, but also meet a major part of their obligations under Section 504.

2. STRUCTURE OF COMPLIANCE

- A. Compliance Requirements to be Addressed: With regard to the compliance responsibilities of a special district and component districts, Regulation X will address the following regulations of the State Plan – Regulation III.1., Child Find; Regulation III.3., Procedures for Evaluation and Determination of Eligibility; Regulation IV.2., Individualized Education Program (IEP); Regulation V, Procedural Safeguards; Regulation IV.3., Least Restrictive Environment; Regulation VIII, Private Schools; and Regulation VII.2., SEA Implementation of Safeguards.
- B. Forms of Compliance: Based upon the division of responsibility for educational services resulting from the creation of a special school district, three forms of compliance can be identified.
- 1) Direct Compliance: Those requirements of the IDEA that can only be complied with by the state's subgrantee will be defined as areas of direct compliance. Here a special school district will have immediate responsibility for both policy development and implementation of the federal requirements.
 - 2) Joint Compliance: Certain issues require joint cooperation between the special and component districts in order for there to be full compliance with the requirements of the IDEA. Although the special district may have primary responsibility to develop policy in these areas, implementation shall be the joint responsibility of the special and component districts. This is required because, for most students with disabilities, special education services are provided in the general education setting. Where sufficient assurances as to these responsibilities are not possible through the compliance plan submitted by the special school district or, when they are a function of state statute, separate assurances may be required of the component districts.
 - 3) Separate Compliance: A third category of compliance will be matters of separate compliance in which each special or component district is responsible for

compliance. Here compliance can only be obtained by policy established by the board of each district. This would include the requirements under Section 504 that are not met through compliance with the IDEA under Regulation X and the requirements of the Family Education Rights and Privacy Act (20 USC Section 1232g).

Each of the compliance issues addressed in Regulation X will be described in terms of one of these three forms of compliance.

3. COMPLIANCE REQUIREMENTS

The following sections outline specific amendments to the designated portions of the State Plan. Their purpose is to clarify compliance responsibilities for a special school district and the component districts of which it is comprised.

- A. Regulation III.1., Child Find addresses the planning and implementation of child find efforts. The specific compliance requirements of each element of the identification process are addressed separately.
 - 1) Awareness and Child Find: It is a matter of direct compliance for the special school district to develop and implement such policies and procedures needed to ensure the publication of appropriate notices through the print media, radio, and television. These policies and procedures must result in appropriate coverage throughout the service area of the special school district. The posting of notices and the distribution of written literature to school patrons is, of necessity, a matter of separate compliance, with each district responsible for distribution of materials within their own facilities.
 - 2) Annual Census: Pursuant to Section 162.695 RSMo, each component district is required to conduct an annual census of students with disabilities and severely handicapped students residing within the district. Based upon this requirement, the census is a matter of separate compliance with each component district.
 - 3) Joint Review Committee: The Joint Review committee shall determine if it is appropriate to refer and evaluate the student to determine eligibility for special education services. This committee shall be composed of staff from both the special and component districts and the work of the committee shall be a matter of joint compliance. The determination to refer and evaluate would require an affirmative recommendation based upon a consensus of the committee and shall be binding upon both the special and component districts.
 - 4) Procedural Safeguards: If the Joint Review committee determines that the referral for evaluation is warranted, then a copy of the Procedural Safeguards and, when appropriate, an appropriate notice of Intent to Evaluate and request for consent to evaluate shall be forwarded to the parent or guardian, by the special school district as a matter of direct

compliance. If the committee refuses to honor a parental or guardian request for evaluation, then appropriate notice of that refusal shall also be required by the special school district to the parent or guardian. Further, these actions are subject to the procedural safeguards and hearing rights assured by the special district and provided under Subpart E of the IDEA regulations and Regulation V of the State Plan, as modified by Regulation X.

B. Regulation III.3., Procedures for Evaluation and Determination of Eligibility

The IEP of a student with a disability shall be based upon a full and comprehensive evaluation. Although policy development and implementation of evaluation procedures rests primarily with the special school district, each component district shall have specific responsibilities in support of the evaluation process.

- 1) Evaluation Procedure: IDEA Regulations (34 CFR 300.530-300.534) and Regulation III.3. of this plan outline specific protections in the evaluation process to determine initial eligibility and subsequent reevaluation. It is a matter of direct compliance for the special school district to maintain appropriate procedures and allocate sufficient personnel to assure these protections.
- 2) Support of the Evaluation Process: Compliance responsibilities to be jointly implemented by the component districts include:
 - a) Providing reports, classroom assessments or other resource materials from their general education staff to the group of individuals evaluating the student to determine eligibility.
 - b) Designating appropriate staff required to participate in the group of individuals evaluating the student for eligibility for special education services or to reevaluate the student on a periodic basis.
 - c) Designating appropriate staff to participate in the group that makes the eligibility determination.
- 3) Procedural Safeguards: Notice of intent to evaluate or re-evaluate to the parent or guardian shall be a matter of direct compliance for the special school district. Notice of initial evaluation would be based upon the determination of the referral review committee. Notice of intent to re-evaluate would be based upon recommendation of the IEP team. Notice would be given both when the evaluation is requested by the IEP team and when the evaluation is based upon parental request (34 CFR 300.504). This would include notice when a parental request for evaluation or re-evaluation has been refused. As with other elements in the process of providing special education and related services, procedural safeguards under Subpart E of the IDEA apply to the evaluation process (34 CFR 300.504). Based upon this notice and any subsequent disagreement with the proposed evaluation/reevaluation, the parent or guardian may invoke the administrative hearing process also provided under Subpart E.

Implementation of these procedural safeguards shall be based upon the provisions of Regulation V.6. of the State Plan as amended by Regulation X, under the direction of the special school district.

C. Regulation IV.2., Individualized Education Program

The Individualized Education Program (IEP) is a written statement summarizing the special education and related services necessary to provide the student with a Free Appropriate Public Education (FAPE). Compliance responsibilities for the development, implementation and review of a student's IEP are addressed in Regulation IV.2. of the State Plan. The following relates these responsibilities to the special and component districts.

- 1) Conducting IEP Meetings: The special school district shall, as a matter of direct compliance, be responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising an IEP for each eligible student 34 CFR 300.343.
- 2) Participants of the IEP Meeting.
 - a) Staff: The special and component districts will be responsible, as indicated, for identifying and assigning the following staff members to participate in IEP meetings. Such assignments shall be made with the understanding that the IEP team decision are binding on both districts and may not be unilaterally changed at a higher administrative level in either district. Decisions relating to the IEP are appealable by the parent or guardian through the administrative hearing process authorized under Regulation V.6. of the State Plan as amended by Regulation X.

General Education Teacher (Component District): At least one general education teacher of the student must be present at IEP meetings for students who are or may be participating in the general education environment. Generally, a general education teacher will need to be identified to participate in IEP meetings for all but a very few children who are receiving services in separate school buildings. However, the determination of whether or not a general education teacher will need to participate in any given meeting or part(s) of a meeting must be made on a child-by-child basis by the members of the IEP team. The district cannot identify any specific group of students (i.e., those in separate buildings) for whom the participation of a general education teacher would not be required.

Local Education Agency (LEA) Representative (SSD): A representative of the SSD must be present to serve in the role of LEA. In accordance with provisions of the IDEA, this person must be:

- i) Qualified to provide, or supervise the provision of, special education services;
- ii) Knowledge about the general curriculum; and,
- iii) Knowledgeable about the availability of resources of the LEA (SSD).

This person must also have the authority to commit the resources of the district. The special education teacher on the IEP team may also assume this role.

Component District Representative (CD): The component district must be represented by a person who:

- i) Can assure implementation of the component district's responsibilities for the IEP. If there will be a general education teacher present at the IEP meeting, this role may be delegated to that person;
- ii) Is knowledgeable of the general education curriculum including extracurricular and non-academic programs; and,
- iii) Is knowledgeable of and can commit resources of the component district, as determined necessary.

Special Education Teacher (SSD): The child's special education teacher, or in the case of an initial IEP, a person qualified to provide special education services, must be present at the IEP meeting.

Individual who can interpret instructional implications of evaluation results (SSD): Person(s) identified above may also serve in this role.

- b) Parents (SSD): The special school district, in convening the IEP meeting, must also ensure, as a matter of direct compliance, appropriate parental or guardian participation in the development of the IEP 34 CFR 300.345. This includes appropriate notification of the meeting with a copy of Procedural Safeguards, scheduling the meeting at a mutually agreed upon time and place, use of other methods of participation if the parent cannot attend, documenting attempts to schedule the meeting at an agreed upon time if the parents refuse to participate, taking those actions needed for the parent to understand the proceedings, and providing the parent a copy of the IEP.
- c) Student (SSD and CD): The SSD, in convening the IEP meeting, must ensure, as a matter of direct compliance, appropriate participation of the student, age 14+ in the development of the IEP, if a purpose of the meeting will be consideration of transition service needs. This includes inviting the student to the meeting and if the students will not participate, ensuring that the necessary steps have been taken to determine the student's needs, preferences and interests. For students

receiving services in a component district building, both the SSD and component district, as a matter of joint compliance, shall ensure that the student has the opportunity to attend the IEP meeting.

- d) Other (CD and SSD): Each district shall, as a matter of direct compliance, ensure that other staff who have knowledge and expertise regarding the child and whose attendance at the IEP meeting has been determined necessary and appropriate by the district, shall be provided the opportunity to attend the IEP meeting.
- 3) Content of the IEP: Although the specific structure of the IEP is dictated by regulation (34 CFR 300.346), the content of each of the specified elements will be the work product of the meeting participants. The goal of the process is to reach consensus, with elements of the IEP intended to reflect agreement on what would be appropriate for the student with disabilities.
- 4) Parental Disagreement with the IEP Content: Should a parent express disagreement about the content of the IEP, three options can be considered:
 - a) Agree upon an interim course of action, including implementation of those components of the IEP where agreement exists and scheduling a time to reconvene the IEP meeting.
 - b) Agree upon some informal method of resolving the disagreement, including mediation or outside consultation.
 - c) Conclude that consensus cannot be reached and that the IEP team decision is subject to the parent's right to the administrative hearing process, as described in Regulation V.6. of the State Plan as amended by Regulation X.
- 5) Role of the SSD and CD Representatives: the SSD and CD staff members who attend the IEP meeting to serve in these roles should strive to reach agreement on each issue regarding services for an individual student. Prolonged disagreement between the representatives of the special and component district could improperly delay implementation of appropriate services. Resolution shall be reached based upon the following:
 - a) The IEP process does not represent a negotiation between the special and component districts regarding control over the development of the student's educational program. It was the clear intent of Congress that, under the IDEA, control rests with the IEP team and not with the local school board of any district.
 - b) Disagreement between the agency representatives or negotiations to resolve the disagreement may not serve to delay parental or guardian hearing rights under the IDEA.

D. Regulation V., Procedural Safeguards*

*Under the Merry litigation, Parkway School District has some joint compliance responsibilities that exceed responsibilities that apply to other districts. Such requirements of the Merry case are incorporated herein by reference.

Each of the compliance areas outlined under Regulation V. of the State Plan relating to procedural safeguards will be addressed separately where requirements differ from the norm due to the organization/nature of SSD.

- 1) Opportunity to Examine Records: The parents or guardian of students with disabilities have the right to inspect and review records with respect to the provision of special education and related services to their child 34 CFR 300.502, in accordance with the procedures outlined within the IDEA regulations, 34 CFR 300.562-300.569. Implementation of these requirements in regard to access and confidentiality of special education records is a matter of separate compliance for each special and component district based upon possession of the records. Each district must have policies in place to assure compliance with these regulatory requirements.
- 2) Independent Evaluation: The assurance of the right of a student with disabilities to have an independent evaluation 34 CFR 300.503 is primarily a matter of direct compliance by the special school district. This would include the parental right to an independent educational evaluation at public expense 34 CFR 300.503 (b), the requirement that parent-initiated evaluations be considered in decisions regarding the student's program 34 CFR 300.503 (c), compliance with hearing officer requests for independent evaluations 34 CFR 300.503 (d), and the requirement that any evaluation obtained at public expense is based upon the same criteria as used by the public agency initiating the evaluation 34 CFR 300.503 (e).
- 3) Prior Parental Notice: The requirement of written parental notice prior to any proposed change or refusal to change the identification, evaluation, or educational placement of the student or the provision of free and appropriate public education to the student 34 CFR 300.504 (a), is a matter of direct compliance by the special school district. Although consultation with appropriate component district staff will be needed in order to determine these recommendations, direct responsibility to assure compliance with this notice requirement, including the assurance of appropriate content of the notice 34 CFR 300.505, is the responsibility of the special school district.
- 4) Prior Parental Consent: Parental consent must be obtained prior to conducting any initial evaluation or additional assessments as part of the reevaluation process and prior to the initiation of special education and related services to a student with a disability 34 CFR 300.504 (c). Obtaining this consent, as well as the initiation of procedures if a parent refuses consent, would be a matter of direct compliance for the special school district.
- 5) Administrative Hearing Process: A parent or the responsible public agency may initiate a hearing on matters regarding the identification, evaluation, or educational placement of the student or the provision of free and appropriate public education, 34 CFR 300.506. It is the responsibility of the SSD to initiate the administrative hearing process for all students with disabilities ages 5 to 21 years of age and for students ages 3 and 4 who reside in

component districts that do not provide Early Childhood Special Education (ECSE) services. Component districts that provide ECSE services have the responsibility to initiate due process for those children. There is no right to a due process hearing to be initiated by one school district against another. School districts within the State of Missouri comply with these requirements based upon the administrative hearing process required under Chapter 162 RSMo. Although full implementation of this hearing process could be defined as a matter of joint compliance, the complexity of this process requires specific delineation of the compliance responsibilities.

- a) Implementation: As the subgrantee under the IDEA, it is a matter of direct compliance for the special school district to implement the hearing process outlined under state statute. This includes designation of the individual to hold the resolution conference pursuant to Section 162.950 RSMo. and choosing a hearing panel member pursuant to Section 162.961 RSMo.
- b) Implementation of the Hearing Decision: As a function of the creation of a special school district and as a matter of compliance with the procedural safeguards under the IDEA regarding the provision of special education and related services, both the special and the component district would be bound by any final decision obtained through the administrative hearing process, 34 CFR 300.509. Implementation of a final decision would be a matter of joint compliance between these districts.
- 6) Separate Compliance with Section 504: As stated previously, some of the protections of Section 504 go beyond the provision of special education services and cannot be addressed in these provisions. Both the special and component districts must, as a matter of separate compliance, maintain policies and procedures that address those requirements of Section 504 that do not relate to the provision of special education services.
- 7) Maintenance of Placement: A major area of joint compliance for the special and component districts will be implementation of the requirements as to the student's status during administrative or judicial proceedings 34 CFR 300.513. Maintenance of the placement for the student with a disability, whether in an instructional setting provided by the special district or the component district, will be required unless there is an agreement of the parties otherwise. Without such agreement, the placement can only be changed by a final decision of a hearing panel, state level review officer, or by order by a court of competent jurisdiction. This would include, but not be limited to, implementation of disciplinary procedures that would constitute a significant change in the placement for the student.
- 8) Surrogate Parents: Sections 162.997-162.999 RSMo. authorize the appointment of surrogate parents when the parents or guardian of the student are not known or unavailable to act on behalf of a student with a disability as required pursuant to IDEA requirements 34 CFR 300.514. The responsibility for the surrogate parent program is a joint compliance. While the SSD has the primary responsibility to notify DESE of a student that is in

need of a surrogate parent, providing the basic notice requirements and evaluating the surrogate performance, the component districts must assist SSD in sharing information to assist them in making a determination of need. The component districts should also assist the SSD in the recruitment of individuals to be trained as Surrogate parents. Component districts must also assist with the implementation of the program by affording the surrogate parents the same rights as other parents.

E. Regulation IV.3., Least Restrictive Environment

The special school district and each component district share responsibility for assuring that students with disabilities will be educated, to the maximum extent appropriate, with their nondisabled peers.

- 1) Continuum of Alternative Placements: IDEA requires that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled and that the removal occur only when the nature or the severity of the disability is such that education in the regular classes cannot be achieved satisfactorily with the use of supplementary aids and services. Each special and component district shall, as a matter of joint compliance, ensure that alternative placements are available to meet the needs of students with disabilities for special education and related services 34 CFR 300.551. This includes the requirement that for every student with a disability:
 - a) Consideration is made, on an annual basis, of placement in the general education environment with appropriate supplementary aids and services, modifications or supports;
 - b) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the student or on other students or on the quality of services which he or she needs; and,
 - c) Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school which he or she would attend if nondisabled 34 CFR 300.552.
- 2) Allocation of Instructional Resources: The special school district and each component district shall, as a matter of joint compliance, adopt those policies and practices needed to assure allocation of instructional resources sufficient to provide appropriate special education and related services. These assurances shall:
 - a) Address allocation of classroom instructional space.
 - b) Address allocation of space for the provision of related services.
 - c) Address the availability and provision of instructional materials to support the general education curriculum, including: current textbooks, teacher manuals and supplements, instructional technology

- (including hardware and software), and other materials that are routinely designated for the use of nondisabled students. Instructional technology (including hardware, software, and multimedia) shall be accessible to students with disabilities either directly by features incorporated within the technology or by compatibility with add-on components.
- d) Address the access of special education teachers to instructional supports generally available to all teaching staff (e.g., duplicating services, computer technology, library/media resources, etc.).

The amount of instructional space provided by each component district should be proportionate to the number of students with disabilities identified as residents of the component district; students with disabilities served by the component district pursuant to the plan for voluntary desegregation for St. Louis County; and, students with disabilities who otherwise attend a private, parochial, parish or home school. Classrooms for students with low incidence disabilities may be strategically located in certain districts and students from any component district may attend.

- 3) Comparable Facilities: Each special and component district shall ensure that the facilities, provided to students with disabilities are comparable to those available to nondisabled students within that building and/or district 34 CFR 104.34 (Section 504).
- 4) Comparable Services and Activities: In the provision of nonacademic and extracurricular service activities, the special and component districts shall ensure, as a matter of joint compliance, that each otherwise qualified student with a disability participates with non disabled students in those services and activities to the maximum extent appropriate to the needs of the student with a disability 34 CFR 300.553 (IDEA) and 34 CFR 104.27 (Section 504).
- 5) Relocation of Instructional Space: Should space requirements within the component district require the relocation of space, the component district shall ensure that these changes are made no more frequently than the relocation of space for general education student services. The changes in the location of space for special education services from one building to another by component districts shall follow the same procedures the component district would follow in designating the location of its own space for instructional purposes 34 CFR 104.4(a) (Section 504).

F. Regulation VIII., Private Schools

It is a matter of joint compliance for the special and component districts to adopt appropriate procedures and practices to allow participation of private school students as previously defined in Regulation VIII of this State Plan.

G. Regulation VII.2., SEA Implementation of Safeguards

Districts are required by the Missouri School Improvement Program (MSIP) Standards to develop a professional development (PD) plan. Implementation of the PD requirements in a special school district is a joint responsibility of the special school district and the component school districts.

- 1) Needs Assessment: Each component district is responsible for collecting and sharing the needs assessment information collected by their Professional Development Committee (PDC) as it relates to students with disabilities. They are also responsible for their participation in appropriate professional development offered by the special district. Such participation shall be sufficient to properly assess and remediate training needs.
- 2) Staff Participation: Each component district is responsible to have policies and procedures in place which direct their participation in activities developed by special school district to conduct a thorough needs assessment relating to personnel development needs of general education personnel. In addition, each component district is responsible to have policies and procedures in place that specify the expectations of their general education personnel to participate in professional development activities developed by the special district and the component districts. Needs assessment data from component district staff may be obtained through sampling techniques. In addition, participation in in-service training by staff from component and special districts should be scheduled to reflect the needs of the staff as determined through the needs assessment process.
- 3) Professional Plan Requirements: The special school district's professional development plan shall include a description of the process used by the special school district to coordinate with the component districts' professional development plans. The special school district should include in their plan professional development activities for administrators (including superintendents and principals), general and special education teachers, related services personnel and paraprofessionals. The special school district should include topics identified by the component districts' needs assessments such as, but not limited to:
 - a) Teamwork;
 - b) Team training on curriculum modifications;
 - c) IDEA regulations;
 - d) Adaptations and modifications of curriculum;
 - e) Screening requirements;
 - f) Instructional strategies;
 - g) Inclusionary strategies/practices; and, General curriculum adopted by component and special districts.

4. ASSURANCE OF COMPLIANCE

Each special district and the component districts of which it is comprised shall submit those assurances mandated by the requirements of the State Plan, as amended by Regulation X, in the form of a local compliance plan or through a jointly ratified addendum to that plan.

- A. Special District Compliance Plan: Those issues determined to be areas of direct compliance shall continue to be addressed in the local compliance plan submitted by the special school district for approval by the Department of Elementary and Secondary Education.
- B. General Assurance Document: Assurances as to areas of joint and separate compliance that are not contained in the special district compliance plan shall be addressed through joint ratification of a general assurance to the special district compliance plan. This general assurance document must be submitted for approval to the Department of Elementary and Secondary Education, Division of Special Education.
- C. Agency Ratification: Joint adoption of any compliance plan or general assurance document by any participating special or component district shall be reflected in board resolutions for that participating district and the signature of the district's chief administrative officer.

XI. STATE OPERATED PROGRAMS

1. SEA PROVISION OF DIRECT SERVICES

The Missouri Department of Elementary and Secondary Education provides free appropriate public education services for students with disabilities through three State Board of Education Operated Programs: School for the Deaf, School for the Blind, and the State Schools for Severely Handicapped.

It is the policy of the Missouri Department of Elementary and Secondary Education that the requirements of Part B of the IDEA are implemented by the State Board of Education Operated Programs responsible for the education of students with disabilities. Each State Board Operated Program is required to submit a Compliance Plan that specifies the policies and procedures necessary to meet the requirements of IDEA.

The DESE ensures that each educational program for children with disabilities administered by the State Board of Education is under the general supervision of the Division of Special Education, Department of Elementary and Secondary Education, and that their programs meet the standards of the SEA.

The DESE ensures that funds provided under Part B to support SEA direct services are used in accordance with Regulation IX.5. of this State Plan, with the exception of those policies related to excess cost.

2. STATE SCHOOLS FOR SEVERELY HANDICAPPED

Regulations for Services

The State Schools for Severely Handicapped, a system of day school services in separate school settings, were established by state law to serve those students with severe disabilities referred to the State Board of Education by local school districts which do not operate such programs themselves and which are not a part of special school districts. If the evaluation information and the Individualized Education Program (IEP) compiled by the local district supports separate school placement as the student's least restrictive educational environment, the local education agency may seek determination of student eligibility for services. The following procedural information is provided to assist school districts in accessing services from the State Schools for Severely Handicapped.

A. Eligibility for State Schools for Severely Handicapped

- 1) Students with severe disabilities are those students who generally have significant cognitive deficits as evidenced by one of the two methods described below:

The student obtains scores falling four or more standard deviations below the mean on standardized measures of cognitive functioning and shows commensurate deficits in at least two areas of adaptive functioning.

OR

The student is not able to respond to any standardized measure of cognitive ability due to a combination of sensory and/or motor impairments, but diagnostic information indicates significant deficits in intellectual and adaptive behavior skills, and the student requires pervasive level of supports across all life areas, as defined by the American Association for Mental Retardation (AAMR) classification system.

This identification shall result from comprehensive evaluation that is consistent with the procedures in Regulation III.3., Procedures for Evaluation and Determination of Eligibility.

- 2) The presence of significant cognitive deficits may permeate a student's educational condition so as to render him/her severely disabled. A student with severe or multiple disabilities would evidence the presence of significant cognitive deficits along with one or more of the other educationally disabling conditions.

Students who educationally benefit from special education and related services that can be provided by local educational agencies are not considered eligible for services through the State Schools for Severely Handicapped. In general, students with disabilities such as cognitive deficits falling two to three standard deviations below the mean, Speech or Language Impairments, Hearing Impaired/Deaf, Visually Impaired/Blind, Learning Disabilities, Emotional Disturbance, Other Health Impaired, Traumatic Brain Injury, or Orthopedically Impaired can receive an appropriate education when served by local educational agencies.

A student with a severe disability may enroll in the State Schools for Severely Handicapped upon attaining the age of five (5) years. Extended School Year services shall be provided to students who attain age five (5) years during the summer, if eligible for such services.

B. Referral Procedures

In order to assure compliance with applicable state and federal laws and regulations governing identification, evaluation, IEP development, and educational placement procedures for students who may be enrolled in the State Schools for Severely Handicapped, the following procedures have been adopted

by the State Board of Education. The local school district is encouraged to request a professional employee of State Schools for Severely Handicapped to participate in this process. Such requests for participation shall be honored when made during the school term and when schedules permit.

- 1) All students identified as potentially in need of special education services shall be enrolled in and served by the local school district pending the determination of such need. This includes students whose performance indicates possible functioning within the range of severe to profound Mental Retardation.
- 2) The local school district in which the student resides shall complete a comprehensive evaluation which is current within three (3) years. Additional evaluations may be required as determined necessary for individual students. The evaluation information must be obtained in accordance with Regulation III.3., Procedures for Evaluation and Determination of Eligibility. Additional educational records or other pertinent information may be required by the State Schools for Severely Handicapped to clarify the student's educational needs.
- 3) Following compilation of evaluation information, the local district where the student resides is responsible for formulation of an IEP for the current school term in accordance with the requirements of Regulation IV.2., Individualized Education Programs. The district must consider all service options, including service through a separate school placement, to determine which is appropriate to meet the student's educational needs.
- 4) If the IEP committee is considering separate school as a placement option for the student, they must document the justification for such placement in writing. This documentation must include that the district has:
 - a) considered educating the child in the LEA;
 - b) identified supplementary aids and services that would be needed to educate the child in the LEA; and,
 - c) articulated why the LEA cannot serve the child in the LEA in a placement that would benefit the child.
- 5) When the IEP indicates the student is in need of services which the local district is unable to provide and which may be provided by the State Schools for Severely Handicapped, the local school district may forward the evaluation report, current IEP, and justification for separate school placement to the State Schools for Severely Handicapped for eligibility review. The preceding IEPs, if applicable, and related educational records and other pertinent information for all services provided by the local district shall also be forwarded. Additional information may be requested on an individual student basis. Following a professional review of this information, the district shall be notified whether or not the student is eligible for services through the State Schools for Severely Handicapped. Such notice shall specify the

placement site should the student be referred. The State Schools for Severely Handicapped decision on such eligibility is not appealable.

- 6) Should the district be notified that the student is eligible for the State Schools for Severely Handicapped, the district may refer the student. Notice of such decision to refer shall be given to the parents by the school district in accordance with the law including an explanation of their right to appeal the action to the local board of education. The district shall submit the Referral only after the parents have been offered all rights available to them in relation to Regulation V, Procedural Safeguards. If the IEP at time of request does not reflect a total of 1800 minutes of service per week, the district must reconvene the IEP team before submitting the referral so as to ensure an IEP team decision on actual minutes needed to provide FAPE.
- 7) Upon receipt of the Referral, enrollment papers will be mailed to the parent by the State Schools for Severely Handicapped.
- 8) Within thirty (30) days following initial enrollment of the student in the State Schools for Severely Handicapped, an IEP/placement review conference shall be held. The purpose of this review is to confirm the appropriateness of continued placement in the State Schools for Severely Handicapped as the least restrictive environment to provide a free appropriate public education for the student. The student's teacher, other appropriate professional personnel from the school, a representative of the referring district, and the student's parent shall be invited to participate in this review. The parents shall be informed of their right to appeal, in accordance with the procedures provided in Regulation V, Procedural Safeguards, any change in placement decision made as a result of this review.

When a clear decision cannot be made for eligibility for services through the State Schools for Severely Handicapped, the district will be notified that an interim IEP will be required for the initial placement. This IEP shall be developed in accordance with the provisions of Regulation IV.2., Individualized Education Programs. The interim IEP may be extended beyond thirty (30) days if circumstances warrant.

- 9) IEP teams will be convened annually or more frequently, if needed, to review and/or rewrite, if appropriate, the IEPs for all students enrolled in the State Schools for Severely Handicapped. These conferences will be conducted in accordance with provisions of Regulation IV.2., Individualized Education Programs, and Regulation IV.3., Least Restrictive Environment.
- 10) At any time the IEP team may determine, based on general functioning level and progress shown, that the student's least restrictive environment for educational placement is the local district. In such instances, the IEP team reviews the IEP, existing data, and education record to determine the plan through which the student will be transitioned to the local school district for services.

C. Reevaluation

- 1) At least once every three (3) years, the local district shall conduct a reevaluation. Reevaluation shall be conducted in accordance with Regulation III.3., Procedures for Evaluation and Determination of Eligibility.
- 2) Results of the reevaluation shall be submitted to the State Schools for Severely Handicapped for review. Additional data may be requested by the State Schools for Severely Handicapped to clarify the student's educational needs.

D. Transfer of Students

1) Transfer within the State Schools for Severely Handicapped System

A student who is enrolled in a State School for Severely Handicapped and moves from one school district to another may transfer enrollment immediately on the basis of the justification for separate school placement, current IEP and evaluation report. This is considered an interim placement, not to exceed thirty (30) days, during which the new local district follows the transfer procedures provided within Regulation III.3., Procedures for Evaluation and Determination of Eligibility, to confirm concurrence with placement in the State Schools for Severely Handicapped as the least restrictive educational environment for the student. If this review results in determination that the State Schools for Severely Handicapped is the least restrictive environment, the district will compile and submit to the State Schools the Agreement for Continued Placement under the existing IEP.

2) Transfer of Students with Severe Disabilities from a Missouri School District, a Special School District, or an Out-of-State Program

A thirty (30) day interim placement in the State Schools for Severely Handicapped may be available for students with severe disabilities who are changing school districts due to a change in residence. These students must have been receiving services in their local district; through cooperative arrangement by their home district with another school district; in a special school district; or in an out-of-state program for students with severe disabilities.

To qualify for this interim placement, the following criteria must be met:

- a) The current IEP and evaluation report are adopted by the new school district pursuant to transfer procedures provided within Regulation IV.3., Least Restrictive Environment.
- b) The new district submits a copy of the student's current IEP and evaluation report to the State Schools for Severely Handicapped with a

letter acknowledging adoption of the documents. In addition, the district requests that the student be served in a thirty (30) day interim placement while district staff and parents consider the least restrictive educational environment for the youngster.

- c) The State Schools for Severely Handicapped will issue a letter of interim placement assignment if the information submitted is viewed as substantiating the request.
- d) Enrollment paperwork must be completed at the onset of the thirty (30) day interim placement period.
- e) During the thirty (30) day interim placement, the local district shall follow the referral procedures to seek eligibility determination in accordance with B 1-6 above.
- f) Upon receipt of the Referral, the State Schools for Severely Handicapped will issue a notice of action to the district and parents confirming continued placement in the State School.

If the State Schools for Severely Handicapped is not confirmed as the student's least restrictive educational environment, the local district is notified of this decision and becomes responsible for providing the required special education and related services in accordance with Regulation V, Procedural Safeguards, and Regulation IV.2., Individualized Education Programs.

3. MISSOURI SCHOOL FOR THE BLIND AND MISSOURI SCHOOL FOR THE DEAF

The Missouri School for the Blind (MSB) and Missouri School for the Deaf (MSD) are established by state law to serve those students referred to the State Board of Education by local school districts who may require such services to receive a free appropriate public education. If the evaluation information and the Individualized Education Program (IEP) compiled by the local district supports separate school placement as the student's least restrictive educational environment, the local education agency may seek determination of student eligibility services. The following procedural information is supplied to assist school districts in accessing services from the Missouri School for the Deaf and Missouri School for the Blind.

A. Eligibility for MSB and MSD

- 1) MSB: Students who are Blind or Visually Impaired, for purposes of MSB eligibility, are those students who meet the state eligibility criteria for Visual Impairment. Students, who meet the state eligibility category criteria for State Schools for Severely Handicapped (SSSH), are not eligible for MSB.
- 2) MSD: Students who are Deaf or Hearing Impaired, for purposes of MSD eligibility, are those students who meet the state eligibility criteria for Deaf/Hearing Impaired. Students, who meet the state eligibility criteria for SSSH, are not eligible for MSD.
- 3) A student may enroll in MSB and MSD upon attaining the age of five (5) years. Extended School Year services shall be provided to students who attain age five (5) years during the summer, if eligible for such services.

B. Referral Procedures

In order to assure compliance with applicable state and federal laws and regulations governing identification, evaluation, IEP development, and educational placement procedures for students who may be enrolled in either the Missouri School for the Deaf or Missouri School for the Blind program, the following procedures have been adopted by the State Board of Education. The local school district is encouraged to request a professional employee of MSB or MSD to participate in this process. Such requests for participation shall be honored when made during the school term and when schedules permit.

- 1) All students identified as potentially in need of services from the State Board operated programs shall be enrolled in local school district programming pending the determination of such need.
- 2) The local school district in which the student resides shall complete a comprehensive and appropriate evaluation information, current within three (3) years. Additional evaluations may be required as determined necessary for individual students. The evaluation information must be obtained in accordance with state regulations (Procedures for Evaluation and Determination of Eligibility). Additional educational records or other pertinent information may be required by MSB or MSD to clarify the student's educational needs.
- 3) Following compilation of evaluation information, the local school district where the student resides is responsible for development of an IEP for the current school term in accordance with the requirements of state regulation provisions for Individualized Education Programs. The district must consider all service options, including service through a separate school placement, to determine which is appropriate to meet the student's educational needs.
- 4) If the IEP team is considering separate school as a placement option for the student, they must document the justification for such placement in writing. This documentation must include that the district has:
 - a) considered educating the child in the LEA;
 - b) identified supplementary aids and services that would be needed to educate the child in the LEA; and,
 - c) articulated why the LEA cannot serve the child in the LEA in a placement that would benefit the child.
- 5) When the IEP indicates the student is in need of services which the local district is unable to provide and which may be provided by the MSB or MSD, the local school district may forward the evaluation report current IEP, and justification for separate school placement to MSB or MSD for eligibility review. The preceding IEPs, if applicable, and related educational records and other pertinent information for all services provided by the local district shall also be forwarded. Additional information may be requested on an individual student basis. Following a professional review of this information, the district shall be notified whether or not the student is eligible for services through MSB or MSD. The eligibility determination is not appealable and is a unilateral determination made by MSB or MSD, respectively.
- 6) Should the district be notified that the student is eligible for MSB or

MSD the district may refer the student. Notice of such decision to refer shall be given to the parent in accordance with the law including an explanation of their right to appeal the action through use of their due process hearing rights. The district shall submit the Referral only after the parents have received an explanation of the Procedural Safeguards. If the IEP at time of request does not reflect a total of 1800 minutes of service per week, the district must reconvene the IEP team before submitting the referral so as to ensure an IEP team decision on actual minutes needed to provide FAPE.

- 7) Upon receipt of the Referral, enrollment papers will be mailed to the parent by MSB or MSD.
- 8) Within thirty (30) days following initial enrollment of the student in MSB or MSD, an IEP meeting shall be held. The purpose of this review is to confirm the eligibility and appropriateness of continued enrollment in MSB or MSD as the least restrictive environment to provide a free appropriate public education for the student and to make necessary revisions in the student's IEP. The student's teacher, other appropriate professional personnel from the school, a representative of the referring district, and the student's parents shall be invited to participate in this review. The parents shall be informed of their right to appeal, in accordance with the Procedural Safeguards, any decision made as a result of this review, including any change in placement decision made as a result of this review. If the IEP team meeting results in a determination that the student is ineligible for services at MSB, the home district will be notified and will need to locate another entity to implement the IEP or revise the IEP if appropriate, pursuant to proper IEP process.

When a clear decision cannot be made for eligibility for services through MSB or MSD, the district will be notified that an interim IEP will be required for a trial basis placement. The interim trial basis for placement must be clearly reflected in the IEP.

- 9) IEP teams will be convened annually or more frequently, if needed, to review and/or rewrite, if appropriate, the IEPs for all students enrolled in MSB or MSD.
- 10) At any time the IEP team may determine, based on general functioning level and progress shown, that the student's least restrictive environment for educational placement is the local district. In such instances, the IEP team reviews the IEP, existing data, and education record to determine the plan through which the student will be transitioned to the local school district for services.

C. Reevaluation

- 1) At least once every three (3) years, the local district shall conduct a reevaluation. Reevaluation shall be conducted in accordance with the provision of the evaluation regulations.
- 2) Results of the reevaluation shall be submitted to MSB and MSD for review. Additional data may be requested by MSB or MSD to clarify the student's educational needs.

D. Subsequent Referral Procedures

The following procedures have been adopted by the State Board of Education for annual enrollment.

- 1) Missouri School for the Deaf or Missouri School for the Blind shall mail a copy of the Letter of Referral to the referring district on an annual basis.
- 2) Personnel from the referring district shall be invited to review the educational progress displayed by the student during the proceeding school term and participate in the development of the student's IEP.
- 3) If the referring district determines a continuing need for services from the Missouri School for the Deaf or Missouri School for the Blind, as documented in the student's IEP, the superintendent of the district shall amend any identifying information concerning the student or parent, as is necessary, sign the referral form, and submit the referral to the Missouri School for the Deaf or Missouri School for the Blind.
- 4) The determination of whether to accept the re-referral for the new school year is a unilateral decision to be made by Missouri School for the Deaf or Missouri School for the Blind and is not appealable. Upon rejection of the re-referral, a home district is responsible for provision of a free appropriate public education.
- 5) At least once every three (3) years, the local district shall submit a reevaluation of the student consistent with the evaluation criteria described above.
- 6) The Missouri School for the Deaf or Missouri School for the Blind shall mail a Letter of Notification to the Parent or Guardian and Local School District of every student enrolled in the previous year who is expected to return and who has been referred by the local school district.

XII. “SEVERELY HANDICAPPED”* STUDENTS AND CONTRACTED PLACEMENT REIMBURSEMENT (SHCPR)

The provisions of this section only apply to costs incurred for placements occurring prior to August 28, 2005.

*Missouri statutes use the term “severely handicapped”; therefore, this section of the State Plan will use that term rather than the preferred term “severely disabled.”

For purposes of this section of the State Plan, severely handicapped children are children who, because of the extent of the handicapping condition or conditions, are unable to benefit from or meaningfully participate in public school programs. Students who are determined to be severely handicapped by the SEA, and not residents of a special school district, are the responsibility of the SEA. The SEA shall provide reimbursement to LEAs for the cost to the LEA of serving students who are severely handicapped in approved private agency placements. Local tax effort (LTE) and any state aid generated by the student shall be deducted from the cost of such a placement.

1. Criteria for Identification as Severely Handicapped

A student is severely handicapped for purposes of “Severely Handicapped Contracted Placement Reimbursement” (SHCPR) if the student meets one of the two criteria listed below, AND the LEA demonstrates an inability to provide the student with educational benefit, within the context of IDEA’s preference for integration with non-disabled peers:

- a. The student scores four or more standard deviations below the mean on standardized measures of cognitive functioning and shows commensurate deficits in at least two areas of adaptive functioning or, if the student is unable to respond to any standardized measure of cognitive ability due to a combination of sensory and/or motor impairments, diagnostic information indicates significant deficits in intellectual and adaptive behavior skills such that the student requires pervasive level of supports across all life areas.
- b. The student’s cognitive impairment is not in the severe mental retardation range described above, but the SEA finds that the student’s disability or disabilities are so pervasive and intense as to require, by any reasonable determination, that the student requires a private educational placement.

2. SHCPR Application Process

- a. LEAs must apply, annually, through the SHCPR process developed by the SEA, for determination of whether a student is severely handicapped.
- b. An LEA request to have a student identified by the SEA as severely handicapped must justify why its removal or proposed removal of the student from the school district or a public school program, is appropriate in the context of the LRE requirements of state and federal regulations implementing IDEA. Such justification must include documentation that the LEA has:
 - 1) Considered educating the student through the public school program;

- 2) Identified supplementary aids and services that would be needed to educate the student in the public school program;
 - 3) Articulated why the school district cannot provide an educational benefit to the student within the school district's own program or through another public school program.
- c. Additional documentation as specified in the application process (e.g. IEPs, evaluation reports, progress notes), or requested on an individual basis shall be submitted.

3. Students Ineligible for SHCPR

- a. Applications for SHCPR may not be submitted by LEAs for students who are enrolled in, and attending, the State Schools for Severely Handicapped (SSSH), Missouri School for the Deaf (MSD), and Missouri School for the Blind (MSB). These students automatically meet the criteria to be identified as severely handicapped by virtue of their enrollment and attendance in SSSH, MSD, and MSB and will continue to be identified as severely handicapped unless SSSH, MSD, or MSB determines, through the IEP process, that the student's least restrictive environment (LRE) is the LEA, or that the student requires a homebound placement. These students do not result in a cost to the district, and therefore no application for SHCPR may be submitted.
- b. A homebound placement is considered an LEA program, and does not include temporary or intermittent homebound services decided upon by the IEP team, as those are services which SSSH, MSD, and MSB provide to students enrolled in and attending SSSH, MSD, and MSB. Therefore, an LEA may not apply for reimbursement to serve students who require a homebound placement.

4. Dispute Resolution/Due Process Hearing Rights/Parent Challenge

- a. A parent of a student referred, and accepted as eligible to attend SSSH, MSD, or MSB continues to have due process hearing rights to challenge the LEA proposed placement in SSSH, MSD, or MSB, if the parent believes that the LEA is the LRE, and that SSSH, MSD, or MSB is too restrictive a placement.
- b. If parent challenges an LEA proposed placement to SSSH, MSD, MSB through a due process hearing, the LEA shall be a party to the due process hearing.
 - 1) The LEA must justify its proposed removal of the child to SSSH, MSD, or MSB at the due process hearing, based on LRE requirements. SSSH, MSD, MSB, (or DESE if named as an agency) shall not be a proper party to such a hearing, but agency staff may be subpoenaed to testify by either party.
- c. A parental challenge to continued SSSH, MSD, or MSB placement for a child enrolled in, and attending SSSH, MSD, or MSB, where the parent believes that the LEA is the LRE, and alleges that SSSH, MSD, or MSB is too restrictive a placement, and where the SSSH, MSD, or MSB IEP team believes that continued placement is appropriate, shall challenge the continued placement through a due process hearing against SSSH, MSD, or MSB. The LEA shall not be a proper

- party to such a hearing, but LEA staff may be subpoenaed to testify by either party.
- d. A parent continues to have due process hearing rights to challenge a LEA proposed private agency placement, even if that proposed placement is of a student who the SEA has determined to be severely handicapped through the SHCPR application process.
 - 1) The LEA must justify, as a party to the due process hearing, its proposed removal of the child from the LEA, and proposed placement to the more restrictive setting of a private agency, at that due process hearing.
 - 2) DESE is not a proper party to such a hearing.
 - e. The right to a “stay-put” placement, provided for in state and federal regulations, applies to a parental challenge of a proposed change of placement described above.

5. Dispute Resolution/Appeal/LEA Challenge

Denial of an LEA application to identify a child as severely handicapped is subject to the LEA’s appeal.

- a. An appeal request must be filed, in writing, with the coordinator of special education services, division of special education, within 20 days of the date the application was denied.
- b. The coordinator, or a designee, shall serve as the review officer, and shall schedule an informal conference within 20 days of receipt of the request for appeal.
- c. The conference shall be held in an informal manner. The LEA may bring witnesses and present oral or written information, but witnesses need not be sworn or a written record kept.
- d. A decision shall be mailed to the LEA within 20 days of the conference, unless an extension of the time-line is determined necessary by the review officer.
- e. Any appeal of the decision shall be filed, in writing, with the assistant commissioner, division of special education, within 10 days of receipt of the decision.
- f. The appeal will consist of a records review by the assistant commissioner, or a designee.
 - 1) Oral argument requests may be granted by the assistant commissioner.
- g. The final decision will be issued by the assistant commissioner within 20 days of receipt of the request for review, unless extension of the time-line is determined necessary by the assistant commissioner.
- h. The appeal process is not subject to Chapter 536 RSMo, because it is not a contested case, and there is no right to a judicial review.
- i. Unless the parent has initiated a due process hearing to challenge the proposed placement that is the subject of the LEA application, resulting in stay-put, the LEA must implement the proposed placement, while the appeal is pending with the SEA.

- j. If the denial of the application is reversed through the appeal process, the SEA shall reimburse retroactively the LEA for the placement of the student who is severely handicapped.

6. IEP Meeting Participation

- a. When the SEA has determined a student is severely handicapped, the SEA reserves the right to attend IEP meetings for that student.
- b. IEP meetings of students attending SSSH, MSD, or MSB are convened by SSSH, MSD, or MSB.
 - 1) LEA representatives shall attend those SSSH, MSD, or MSB IEP meetings in which integration activities at the LEA are being considered by the team, or where a change in placement to the LEA is anticipated. A refusal of the LEA to attend such IEP meetings shall not prevent the IEP team from meeting.

7. Integration Activities

Students, who are enrolled in, and attending State Board Operated Programs (SSSH, MSD, and MSB) and who take part in integration activities in the LEA, pursuant to their IEP, are still considered severely handicapped. Any integration activities decided upon by the IEP team shall be implemented. The LEA must allow access to the student enrolled in a SBOP, in accordance with the IEP. The SBOP shall arrange for and pay for any transportation involved in such integration activities and shall provide staff to accompany the student while the student attends integration activities at the LEA site.